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INTERNAL AFFAIRS BUREAU
INVESTIGATIVE SUMMARY

Subject: **Wesley Fenderson, Deputy, Employee #[redacted]**

Lancaster Station, Field Operations Region I

Date: **December 29, 2007**

Location: Lancaster Sheriff's Station
501 West Lancaster Boulevard, Lancaster, Ca. 93534

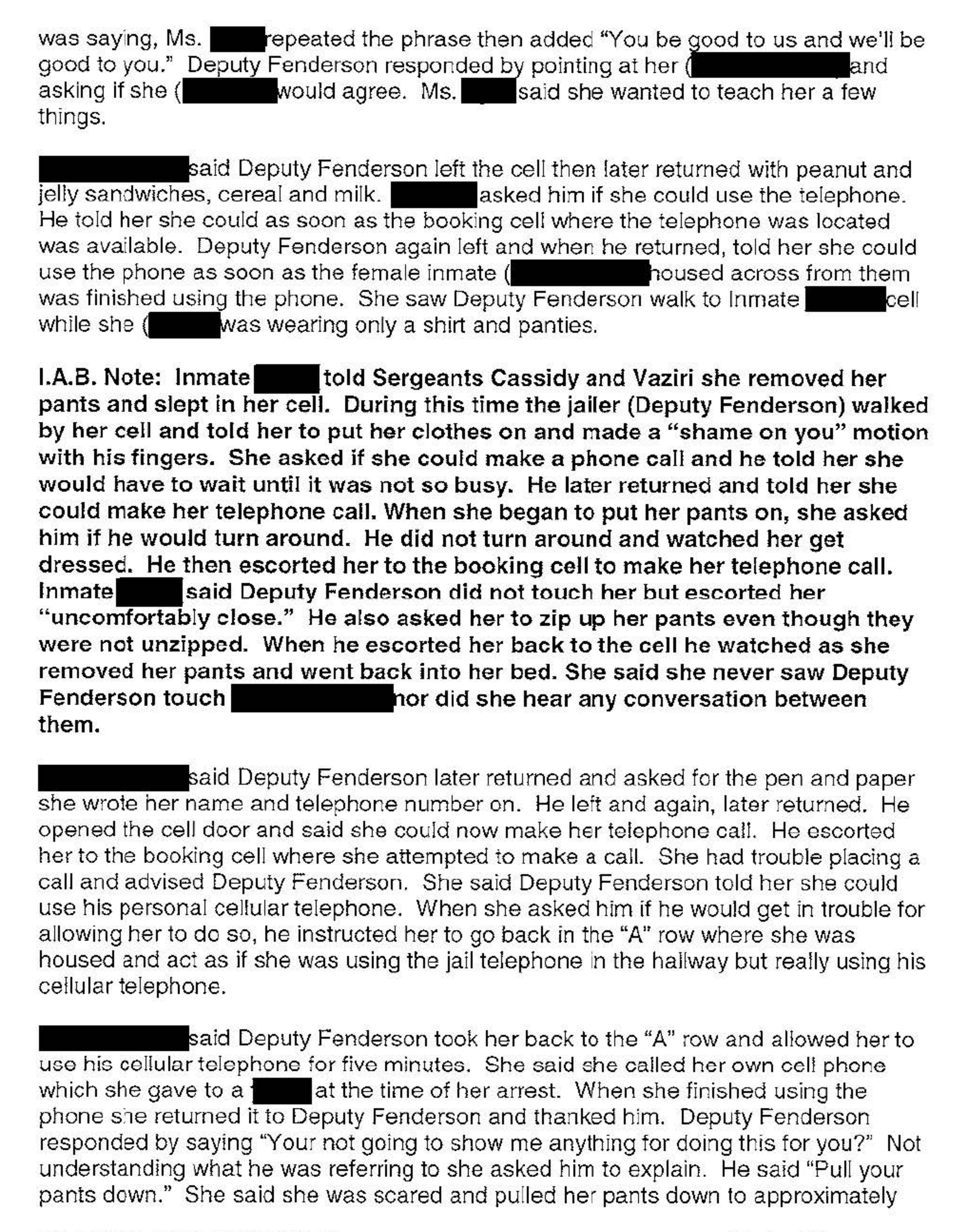
Inmate [redacted] alleged she was touched inappropriately by Deputy Wesley Fenderson while she was incarcerated at the Lancaster Sheriff's Station in the city of Lancaster. She reported her allegation to the Early Morning supervisor at Lancaster Station on 12-30-07. The Sheriff's Department Internal Criminal Investigations Bureau, Sergeant William Cassidy #[redacted] and Susan Vaziri #[redacted] responded to Lancaster Station and conducted a criminal investigation **(Exhibit A)**. The case was presented to Justice System Integrity Division of the Los Angeles County District Attorney's Office who completed a review of the case and allegations. The case was subsequently rejected due to lack of sufficient evidence.

I.A.B. Note: The District Attorney Charge Evaluation Worksheet is included with Exhibit "A" of this case.

SYNOPSIS:

During the interview with Sergeants Cassidy and Vaziri, [redacted] said she was housed with another female ([redacted] in the "A" row of the Lancaster Station jail. She said, during the evening of December 29, 2007, the jailer (Deputy Wesley Fenderson) opened their cell door and asked her to walk over to the door and asked her for her telephone number. She questioned if it would be ok if she gave him her number and would it get him in trouble. He told her it would be ok and left the cell. He returned a short time later with a pen and a piece of paper and asked her to write her name and telephone number. She complied and maintained possession of the paper and pen.

[redacted] said her cell mate ([redacted] heard Deputy Fenderson ask for her number and began to flirt with Deputy Fenderson. She told him they were hungry and asked if there was any extra food to eat. When he told them he would check, Ms. [redacted] told him if he takes care of them, they would take care of him. When he questioned what she



was saying, Ms. [redacted]repeated the phrase then added "You be good to us and we'll be good to you." Deputy Fenderson responded by pointing at her ([redacted]and asking if she ([redacted]would agree. Ms. [redacted]said she wanted to teach her a few things.

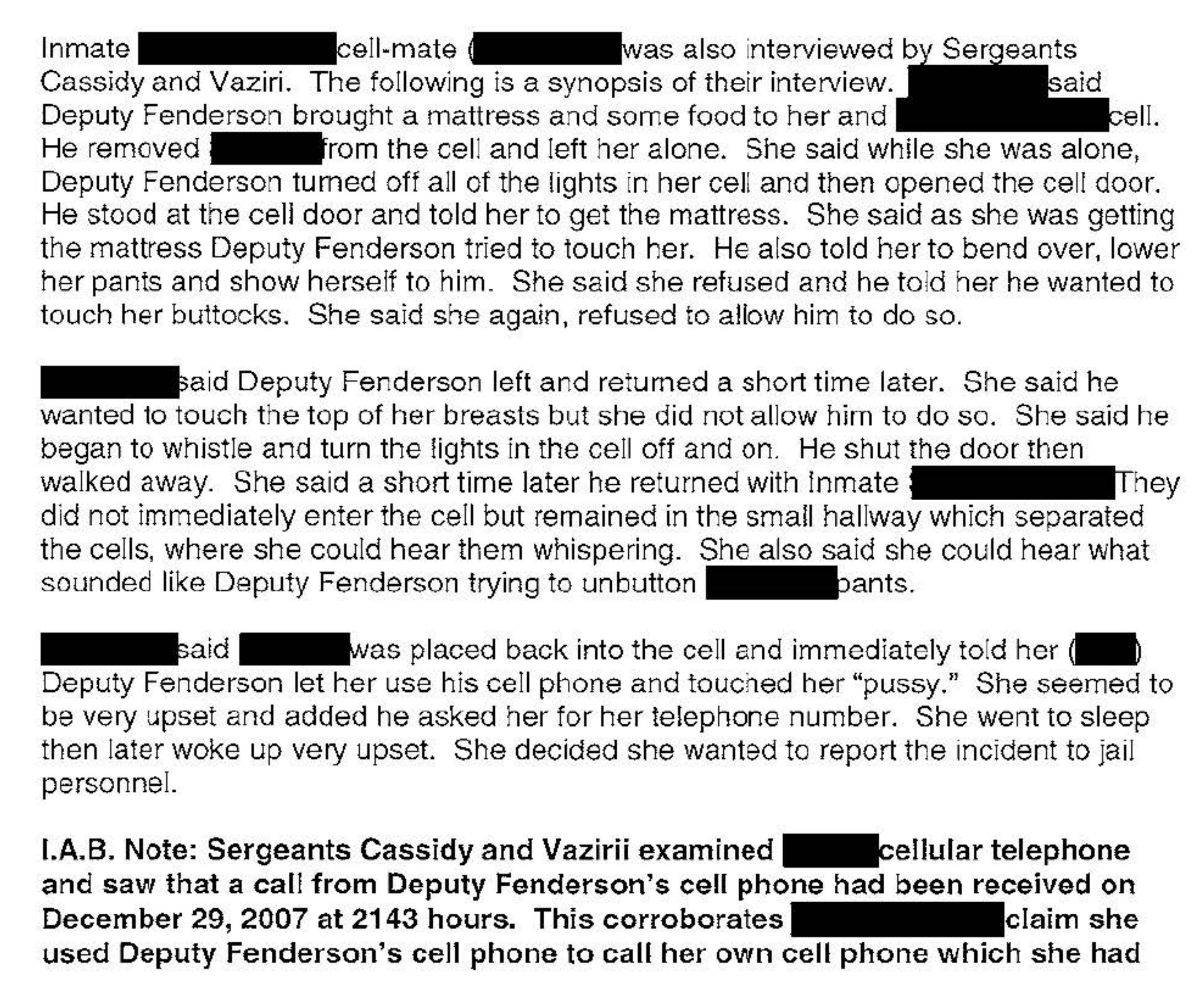
[redacted]said Deputy Fenderson left the cell then later returned with peanut and jelly sandwiches, cereal and milk. [redacted]asked him if she could use the telephone. He told her she could as soon as the booking cell where the telephone was located was available. Deputy Fenderson again left and when he returned, told her she could use the phone as soon as the female inmate ([redacted]housed across from them was finished using the phone. She saw Deputy Fenderson walk to Inmate [redacted]cell while she ([redacted]was wearing only a shirt and panties.

I.A.B. Note: Inmate [redacted]told Sergeants Cassidy and Vaziri she removed her pants and slept in her cell. During this time the jailer (Deputy Fenderson) walked by her cell and told her to put her clothes on and made a "shame on you" motion with his fingers. She asked if she could make a phone call and he told her she would have to wait until it was not so busy. He later returned and told her she could make her telephone call. When she began to put her pants on, she asked him if he would turn around. He did not turn around and watched her get dressed. He then escorted her to the booking cell to make her telephone call. Inmate [redacted]said Deputy Fenderson did not touch her but escorted her "uncomfortably close." He also asked her to zip up her pants even though they were not unzipped. When he escorted her back to the cell he watched as she removed her pants and went back into her bed. She said she never saw Deputy Fenderson touch [redacted]nor did she hear any conversation between them.

[redacted]said Deputy Fenderson later returned and asked for the pen and paper she wrote her name and telephone number on. He left and again, later returned. He opened the cell door and said she could now make her telephone call. He escorted her to the booking cell where she attempted to make a call. She had trouble placing a call and advised Deputy Fenderson. She said Deputy Fenderson told her she could use his personal cellular telephone. When she asked him if he would get in trouble for allowing her to do so, he instructed her to go back in the "A" row where she was housed and act as if she was using the jail telephone in the hallway but really using his cellular telephone.

[redacted]said Deputy Fenderson took her back to the "A" row and allowed her to use his cellular telephone for five minutes. She said she called her own cell phone which she gave to a [redacted] at the time of her arrest. When she finished using the phone she returned it to Deputy Fenderson and thanked him. Deputy Fenderson responded by saying "Your not going to show me anything for doing this for you?" Not understanding what he was referring to she asked him to explain. He said "Pull your pants down." She said she was scared and pulled her pants down to approximately

her mid-thigh area, exposing her panties. She said Deputy Fenderson reached over and pulled her panties down, exposing her vagina. He did so by moving a finger back and forth across the front of the panties and pushing them down. She said with her panties down, Deputy Fenderson rubbed the front part of her vagina with his hand for approximately three seconds. He did not insert his fingers into her vagina but asked her to open her "lips" (vaginal opening). She told him she was not comfortable doing that as she had not showered. He told her he did not care if she showered. She told him she cared and reached down to pull her panties back up. She said before she was able to do so, Deputy Fenderson pulled up her shirt, put his hand underneath her bra and touched her breasts. She pulled her shirt down and began to pull her panties up. She said before she was able to do so, Deputy Fenderson reached behind her and grabbed her bare buttocks. When she was finally able to get her panties up he, sensing she was uncomfortable, said "Make sure you call me when you get out of here, so we can hook up." He added, "When I say hook up, you know what I mean, right?" She told him she was not exactly sure and he told her she knew what he meant. He then placed her back into her cell.



Inmate [redacted] cell-mate ([redacted] was also interviewed by Sergeants Cassidy and Vaziri. The following is a synopsis of their interview. [redacted] said Deputy Fenderson brought a mattress and some food to her and [redacted] cell. He removed [redacted] from the cell and left her alone. She said while she was alone, Deputy Fenderson turned off all of the lights in her cell and then opened the cell door. He stood at the cell door and told her to get the mattress. She said as she was getting the mattress Deputy Fenderson tried to touch her. He also told her to bend over, lower her pants and show herself to him. She said she refused and he told her he wanted to touch her buttocks. She said she again, refused to allow him to do so.

[redacted] said Deputy Fenderson left and returned a short time later. She said he wanted to touch the top of her breasts but she did not allow him to do so. She said he began to whistle and turn the lights in the cell off and on. He shut the door then walked away. She said a short time later he returned with Inmate [redacted] They did not immediately enter the cell but remained in the small hallway which separated the cells, where she could hear them whispering. She also said she could hear what sounded like Deputy Fenderson trying to unbutton [redacted] pants.

[redacted] said [redacted] was placed back into the cell and immediately told her ([redacted]) Deputy Fenderson let her use his cell phone and touched her "pussy." She seemed to be very upset and added he asked her for her telephone number. She went to sleep then later woke up very upset. She decided she wanted to report the incident to jail personnel.

I.A.B. Note: Sergeants Cassidy and Vazirii examined [redacted] cellular telephone and saw that a call from Deputy Fenderson's cell phone had been received on December 29, 2007 at 2143 hours. This corroborates [redacted] claim she used Deputy Fenderson's cell phone to call her own cell phone which she had

given to a friend at the time of her arrest. Also, Deputy Fenderson provided a piece of paper with [redacted] name and phone number to Sergeants Cassidy and Vaziri during his I.C.I.B. interview. He also provided them with his cell phone in which the out going call log indicates a call was in fact made to [redacted] cell phone.

SUBJECT INTERVIEW:

Deputy Wesley Fenderson, #[redacted] was interviewed on April 23, 2009. The interview took place at Internal Affairs Bureau. Sergeants Albert Maldonado and Jack Ramirez conducted the interview. Deputy Fenderson's attorney Deborah Schild was present during the interview. The interview was digitally recorded and a copy of the transcribed interview is provided. The following is a summary of the interview.

Deputy Fenderson admitted Inmate [redacted] asked him several times if she could use the telephone. He told her she would have to wait until he had an opportunity to allow her to do so. He said toward the end of his shift he allowed her to use the telephone. He said he removed her from the cell and placed her in the booking cell where she would be able to use the jail telephone. He said he left [redacted] alone then returned to her cell where he gave [redacted] cell-mate ([redacted] a mattress which she requested earlier. He went about his duties and when he believed [redacted] was finished making her telephone call, he removed her from the booking cell and began to escort her back into her cell. As he escorted her back she told him she was not successful in making her calls because the calls would not go through. She asked if she could use his cell phone and he initially refused. He said she continued to ask and "to be nice," he agreed to allow her to do so. He secured her in the small hallway in front of her cell and let her use his personal cell phone for approximately five minutes.

When she was finished using the phone, she handed it back to him and asked "What do I need to do now? Do you want to hook up?" He said he told her she didn't have to do anything and she asked him if he was sure. As he placed her back into her cell he asked her to give him her telephone number. He said she told him she didn't have anything to write with, and he said he removed a piece of paper from a bag he was carrying and provided it to her so she could write her name and telephone number on it. He said he left the cell and did not return as his shift was ending.

Deputy Fenderson acknowledged telling [redacted] he would call her. He said he asked her if the telephone number she provided was real and then told her he would call her. He added he was joking and never really intended to call her or see her at a later time.

Deputy Fenderson also mentioned [redacted] unbuttoned her pants and opened the front fly portion of her pants. He denied she lowered her pants and exposed her underwear or vagina to him. He also denied asking her to "open her lips" and denied

he touched her vagina, breasts or buttocks.

Deputy Fenderson also acknowledged interacting with [redacted] who was housed with [redacted] He said she asked him for food and a mattress. He told he would get it for her and told him "If you get that for us, we'll get you whatever you want," as she simultaneously grabbed her own breasts. He told her he didn't need anything and continued to walk away. He returned and she asked if he was sure and that she would give him anything he wants. He said he told her he was sure but that he would bring the items she requested to her. He later had a trustee bring her the food items and place them in a tray. He said he also brought her a mattress and placed it in the cell. When he brought her the mattress, she again began to ask him if he was sure he didn't want anything and that she could give him anything he wanted. She grabbed her shirt and made a motion as if she would lift up her shirt to expose herself. He told her she didn't have to do that and then closed the door and walked away. He denied asking her to bend over and show herself to him. He also denied telling her he wanted to touch her.

Deputy Fenderson admitted to interacting with [redacted] who was housed directly across from [redacted] and [redacted] He said when he passed by her cell he noticed she was only wearing a t-shirt and underwear. He told her she could not be dressed that way and that she would need to put something on. He said she told him this is what she wears when she sleeps. He said he told her she still needs to be dressed.

Deputy Fenderson said later in the shift he allowed her to use the telephone. He removed her from her cell and escorted her to the booking cell where the jail telephone was located. He said she was dressed as she exited the cell and denied watching her get dressed. He said he stood behind the cell door and was not able to look into the cell prior to her exiting. As he escorted her, he said he noticed her pants were unbuttoned and told her to button her pants. He also admitted to at one point dragging a finger across another finger indicating "shame on you." When she completed her telephone call, Ms. Stone (Custody Assistant Deborah Stone) escorted her back to her cell.

Deputy Fenderson added it was not uncommon at Lancaster Station for a male deputy to interact with female inmates without a partner or another sheriff's department employee. He said he was not aware of policy or directives that addressed the issue of a male deputy dealing with female inmates alone or without a partner.

IAB Note: All of the interviews were digitally recorded. Copies of the transcribed interviews have been included with this case.

LOS ANGELES COUNTY DISTRICT ATTORNEY
CHARGE EVALUATION WORKSHEET

FELONY X MISDEMEANOR	AGENCY NAME LASD - INTERNAL AGENCY FILE NO. (DR OR URN) 508-0003-2003-441	DA CASE NO. 29435330 DA OFFICE CODE J.S.I.D. 08-0174R	DATE 01/08/2009 VICTIM ASSISTANCE REFERRAL ☐ YES – NOTIFY VWAP x NO

SUSP NO.	SUSPECT	CHARGES CODE	SECTION	OFFENSE DATE	REASON CODE
1	NAME (LAST, FIRST MIDDLE)) FENDERSON, WESLEY	PC	243(E)(1)	12/28/2007	B
	DOB: / SEX (M/F): M / BOOKING NO.: N/A / VIP -- Yes X No				
	___ Gang Member Name of Gang				
	___ Victim Gang Member Name of Gang:				
2	NAME (LAST, FIRST MIDDLE))				
	DOB / SEX (M/F) / BOOKING NO. / VIP -- Yes -- No				
	Gang Member Name of Gang				
3	NAME (LAST, FIRST MIDDLE))				
	DOB / SEX (M/F) / BOOKING NO. / VIP -- Yes -- No				
	Gang Member Name of Gang				

Comments

SEE ATTACHED.

COMPLAINT DEPUTY (print)	COMPLAINT DEPUTY (SIGNATURE)	STATE BAR NO.	REVIEWING DEPUTY (SIGNATURE)
MARGO BAXTER/smm	Margo Baxter	166936	[signature]

I have conveyed all relevant information to the above-named Deputy District Attorney to be used in consideration of a filing decision.

FILING OFFICER (PRINT): SGT. WILLIAM CASSIDY/L.A.S.D. FILING OFFICER (SIGNATURE) MAILED 01 15 09 SERIAL #:

DEPARTMENT OF JUSTICE REASON CODES (FORM 8715) A. Lack of Corpus B. Lack of Sufficient Evidence C. Inadmissible Search/Seizure	D. Victim Unavailable/Declines To Testify E. Witness Unavailable/Declines to Testify F. Combined with Other Counts/Cases G. Interest of Justice	H. Other (indicate the reason in Comments section) I. Referred to Non-California Jurisdiction J. Deferred for Revocation of Parole K. Further Investigation	L. Prosecutor Prefiling Deferral DISTRICT ATTORNEY'S REASON CODES M. Probation Violation filed (in lieu of) N. Referred to City Attorney for Misdemeanor Consideration

LAST NAME: FENDERSON FIRST NAME: WESLEY DA CASE NUMBER: 29435330

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of allegations that Los Angeles Sheriff's Department (LASD) Deputy Wesley Fenderson, #[redacted] sexually battered [redacted] in violation of Penal Code Section 243(e)(1). For the reasons set forth below, we decline to initiate criminal proceedings against Deputy Fenderson.

The following analysis is based upon reports and interviews submitted to this office on March 19, 2008 by Sergeant William Cassidy of LASD's Internal Criminal Investigation Bureau (ICIB).

FACTUAL ANALYSIS

On Friday December 28, 2007, [redacted] was arrested on a misdemeanor warrant for Penal Code Section 484(a), petty theft, and incarcerated in the Lancaster Sheriff Station jail. Deputy Wesley Fenderson's scheduled work hours on Saturday, December 29, 2007, were from 2:00 p.m. until 10:00 p.m. On Sunday, December 30, 2007, [redacted] made a complaint to Sergeant Kent Kroeger that Deputy Fenderson had touched her inappropriately the previous evening.

On December 30, 2007, Sergeants Cassidy and Susan Vaziri interviewed [redacted] regarding her allegations. According to [redacted] she and the other female inmates were housed in "A" row. This area is a short hallway which accesses four cells, two on each side of the hallway, and has a shower at the end of it. There is a telephone on the hallway wall between two cells.

On the evening of Saturday, December 29th, [redacted] was sharing a cell with [redacted] At some point in the evening, a deputy, later identified as Fenderson, opened [redacted] cell door. Fenderson had [redacted] step out of her cell and asked "Is it okay if I ask you for your number?" [redacted] asked him if it was acceptable for her to do that and whether or not he would get into trouble. Fenderson told [redacted] that she could give him her number. Fenderson left the cell and returned shortly thereafter with a pen and paper. [redacted] wrote down her name and telephone number. At this time, [redacted] began flirting with Fenderson in an attempt to get food because she was hungry. According to [redacted] told Fenderson, "You be good to me, and I will be good to you." Fenderson left and returned with food for [redacted] and [redacted] asked Fenderson if she could use the telephone. Fenderson told [redacted] she would have to wait because the phone was located in the booking area which was currently full. [redacted] went to sleep. Fenderson came back to the cell and retrieved the pen he had given her and the paper on which she had written her name and number. Fenderson came back later in the evening, opened the cell and told her she could use the telephone. Fenderson walked her to the booking cell where the telephone was located. [redacted] attempted to make a call but was unsuccessful. She knocked on the glass and told Deputy Fenderson.

According to [redacted] Fenderson offered to let her use his personal cell phone. She again asked Fenderson if this was going to get him in trouble. Fenderson told [redacted] that she should go to "A" row and use his phone because she could pretend that she was talking on the phone located in that hallway. Fenderson took her back to "A" row and gave her his phone. He told her she could use his phone for five minutes and left the area. [redacted] called her own cell phone which she had given to a cousin when she was arrested. Fenderson returned approximately three to four minutes later while she was still on the phone. She finished her conversation, thanked Fenderson and handed him back the phone. Fenderson said to her, "You're not going to show me anything for doing this for you?" [redacted] replied, "Show you something? Show you something like what?" Fenderson told her to "pull her pants down." [redacted] said she was scared so she pulled her pants down to the middle of her thighs. Fenderson pulled her underwear down with one hand and rubbed the front of her crotch with one finger as he did so.

Once her underwear was down, he rubbed the front of her pubic area with his hand for approximately three seconds. Fenderson then told her to "open up her lips." [redacted] refused to do so and reached down and pulled up her underwear. As she did so, Fenderson reached up under her shirt and bra and touched her bare breast and grabbed her bare buttocks. Fenderson told her "Make sure you call me when you get out of here so we can hook up."[1] Fenderson added, "When I say hook up, you know what I mean, right?" Fenderson left the area. [redacted]old investigators she waited until his shift was over to make the complaint.

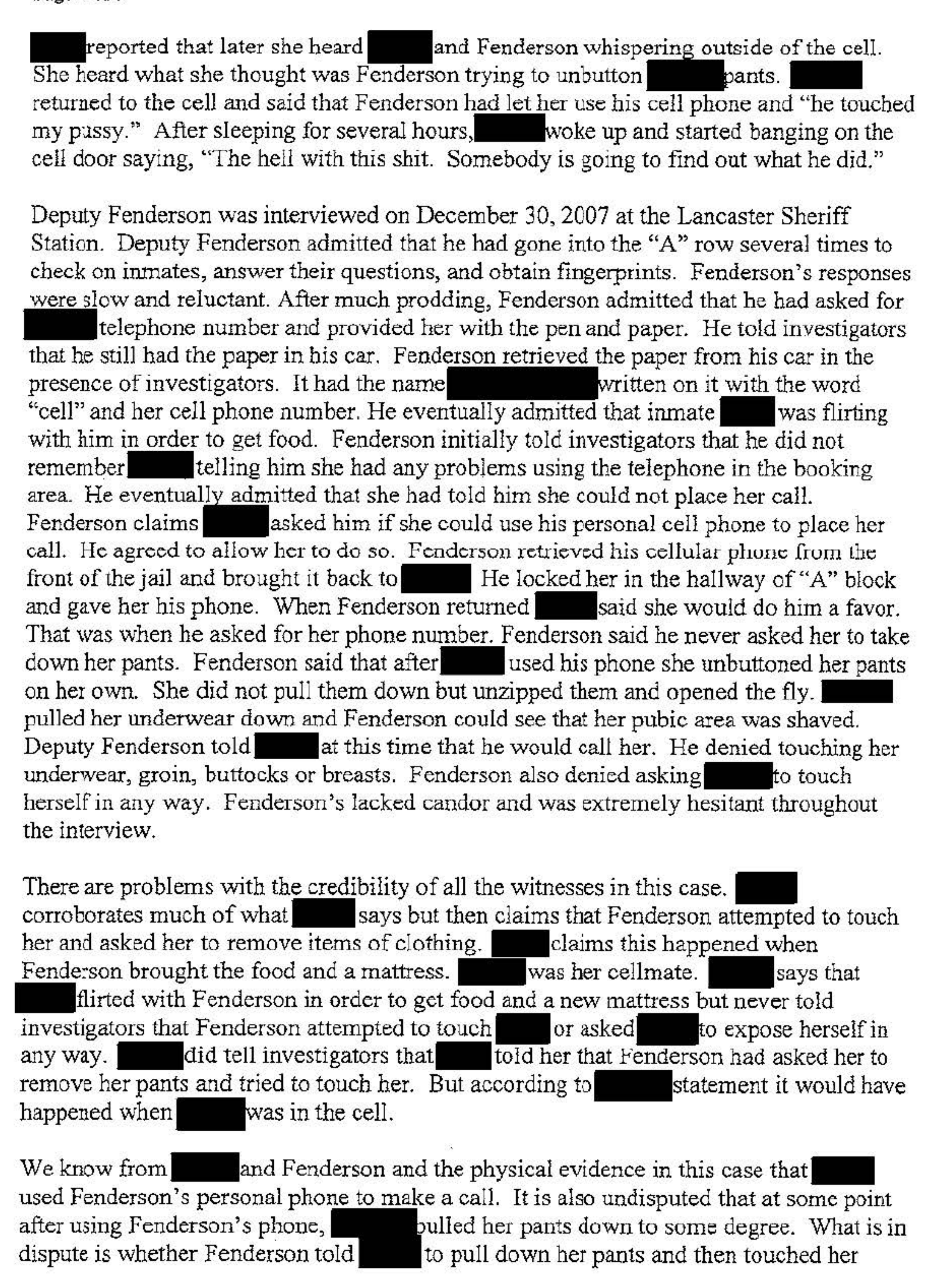
Investigators had [redacted] contact a relative who brought her cell phone to the Lancaster jail. Vaziri and Cassidy examined the phone and saw that a call from Fenderson's cell phone [redacted] had been received on [redacted] cell phone on December 29, 2007 at 9:43 p.m.

Investigators interviewed another female inmate, [redacted] who was in a cell by herself in the A block during the incidents in question. She told investigators that Fenderson was flirting with her and watched her get dressed. She did not see Fenderson touch [redacted] She did not hear any conversation between them. [redacted]ater told her that Fenderson had stuck his finger in her vagina and asked to show him her breasts.

[redacted]cellmate, [redacted] age 54, was also interviewed. She is [redacted]and told investigators that she had not taken her medication for a month. She stated that Deputy Fenderson brought her a new mattress and some food. When he did he told [redacted]o bend over, take her pants off and show herself to him. Fenderson also told [redacted]hat he wanted to touch her buttocks. She said that Deputy Fenderson returned later and asked to touch the top of her breasts but she told him no. Fenderson turned the lights of her cell off and on and whistled. He laughed and shut the door.

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[1] [redacted] assumed that Fenderson thought she would have his number as it would appear on her cell phone in the calls received listing.



[redacted] reported that later she heard [redacted] and Fenderson whispering outside of the cell. She heard what she thought was Fenderson trying to unbutton [redacted] pants. [redacted] returned to the cell and said that Fenderson had let her use his cell phone and "he touched my pussy." After sleeping for several hours, [redacted] woke up and started banging on the cell door saying, "The hell with this shit. Somebody is going to find out what he did."

Deputy Fenderson was interviewed on December 30, 2007 at the Lancaster Sheriff Station. Deputy Fenderson admitted that he had gone into the "A" row several times to check on inmates, answer their questions, and obtain fingerprints. Fenderson's responses were slow and reluctant. After much prodding, Fenderson admitted that he had asked for [redacted] telephone number and provided her with the pen and paper. He told investigators that he still had the paper in his car. Fenderson retrieved the paper from his car in the presence of investigators. It had the name [redacted] written on it with the word "cell" and her cell phone number. He eventually admitted that inmate [redacted] was flirting with him in order to get food. Fenderson initially told investigators that he did not remember [redacted] telling him she had any problems using the telephone in the booking area. He eventually admitted that she had told him she could not place her call. Fenderson claims [redacted] asked him if she could use his personal cell phone to place her call. He agreed to allow her to do so. Fenderson retrieved his cellular phone from the front of the jail and brought it back to [redacted] He locked her in the hallway of "A" block and gave her his phone. When Fenderson returned [redacted] said she would do him a favor. That was when he asked for her phone number. Fenderson said he never asked her to take down her pants. Fenderson said that after [redacted] used his phone she unbuttoned her pants on her own. She did not pull them down but unzipped them and opened the fly. [redacted] pulled her underwear down and Fenderson could see that her pubic area was shaved. Deputy Fenderson told [redacted] at this time that he would call her. He denied touching her underwear, groin, buttocks or breasts. Fenderson also denied asking [redacted] to touch herself in any way. Fenderson's lacked candor and was extremely hesitant throughout the interview.

There are problems with the credibility of all the witnesses in this case. [redacted] corroborates much of what [redacted] says but then claims that Fenderson attempted to touch her and asked her to remove items of clothing. [redacted] claims this happened when Fenderson brought the food and a mattress. [redacted] was her cellmate. [redacted] says that [redacted] flirted with Fenderson in order to get food and a new mattress but never told investigators that Fenderson attempted to touch [redacted] or asked [redacted] to expose herself in any way. [redacted] did tell investigators that [redacted] told her that Fenderson had asked her to remove her pants and tried to touch her. But according to [redacted] statement it would have happened when [redacted] was in the cell.

We know from [redacted] and Fenderson and the physical evidence in this case that [redacted] used Fenderson's personal phone to make a call. It is also undisputed that at some point after using Fenderson's phone, [redacted] pulled her pants down to some degree. What is in dispute is whether Fenderson told [redacted] to pull down her pants and then touched her

pubic area, breast and buttocks or whether [redacted] pulled her own pants down and gave Fenderson a look at her pubic area.

Once released from custody, ICIB investigators attempted to contact [redacted] several times for additional information. She did not return six voice mail messages. [redacted] failed to show for two scheduled appointments as well. The District Attorney's Office has also left several messages which have not been returned.

CONCLUSION

In order to prove a misdemeanor sexual battery[2] in violation of Penal Code § 243.4(e) (1) the following must be proved:

1. Fenderson touched an intimate part of [redacted]
2. The touching was against [redacted] will and,
3. Fenderson touched [redacted] for the purpose of sexual gratification or arousal

There is insufficient independent credible evidence to prove beyond a reasonable doubt that Deputy Fenderson sexually battered [redacted] in violation of Penal Code Section 243.4(e) (1). Although Fenderson admitted conduct that clearly constitutes severe administrative violations, he adamantly denied that he told [redacted] to remove her pants or touched her pubic area, breasts or buttocks. [redacted] claim that Fenderson touched her pubic area, breast and buttocks are somewhat corroborated by her cellmate, [redacted] However, [redacted] credibility is suspect as she also claims Fenderson asked her to remove her pants and attempted to touch her as well. According to [redacted] timeline of when this occurred, [redacted] would have been in the cell. [redacted] who was her cell-mate, did not report any of this conduct during her interview with investigators. [redacted] reported that [redacted] told her later in the evening that Fenderson had taken those actions. The remaining evidence is the contradictory statements of [redacted] and Fenderson. Fenderson's responses and reluctance during his interview give an overall impression of lack of candor. [redacted] version of events is not corroborated. In addition, she has cancelled appointments for follow-up meetings and has not returned the phone messages left by both ICIB and the District Attorney's Office. Even with her cooperation, this case could not be proven beyond a reasonable doubt with sufficient, credible evidence.

We therefore decline to initiate criminal proceedings against Deputy Fenderson. We are closing our file and will take no further action in this matter.

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[2] Any violation in this case would be a misdemeanor as there was no unlawful restraint of [redacted] at time of the alleged touching.



County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



September 23, 2009

Deputy Wesley Fenderson, [redacted]

Dear Deputy Fenderson:

You are hereby notified that it is the intention of the Sheriff's Department to discharge you from your position of Deputy Sheriff, Item No. 2708A, with this Department, effective the close of business October 15, 2009.

An investigation under File Number IAB 2211030, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Sections 3-01/050.85, Fraternization; and/or 3-01/030.05, General Behavior; and/or 3-01/050.10, Performance to Standards, on or about December 29, 2007, while assigned to work the jailer position at Lancaster Station, you fraternized with and/or did favors for a female prisoner, [redacted] as evidenced by, but not limited to:

    a) allowing [redacted] to use your cellular phone to make a personal phone call, and/or;

    b) asking [redacted] to write her name and cell phone number down on a piece of paper and give it to you.

    Thus, you failed to conform to the work standards established for your position as a deputy sheriff and your actions have brought discredit upon yourself and the Sheriff's Department.

2. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/030.07, Immoral Conduct; and/or 3-01/050.10, Performance to Standards, on or about December 29, 2007, while working as the station jailer, you behaved in such a manner as to bring discredit upon yourself and the Sheriff's Department and/or failed to maintain a level of moral conduct that is in keeping with the highest standards of the law enforcement profession, as evidenced by, but not limited to:

   a) telling Inmate [redacted] to pull down her pants so you could look at her, and/or;

   b) touching and/or massaging [redacted] genital area, and/or;

   c) telling [redacted] words to that effect of,"spread your lips [referring to her vaginal area]," and/or;

   d) pulling up [redacted] shirt and grabbing her bare breasts underneath her bra, and/or;

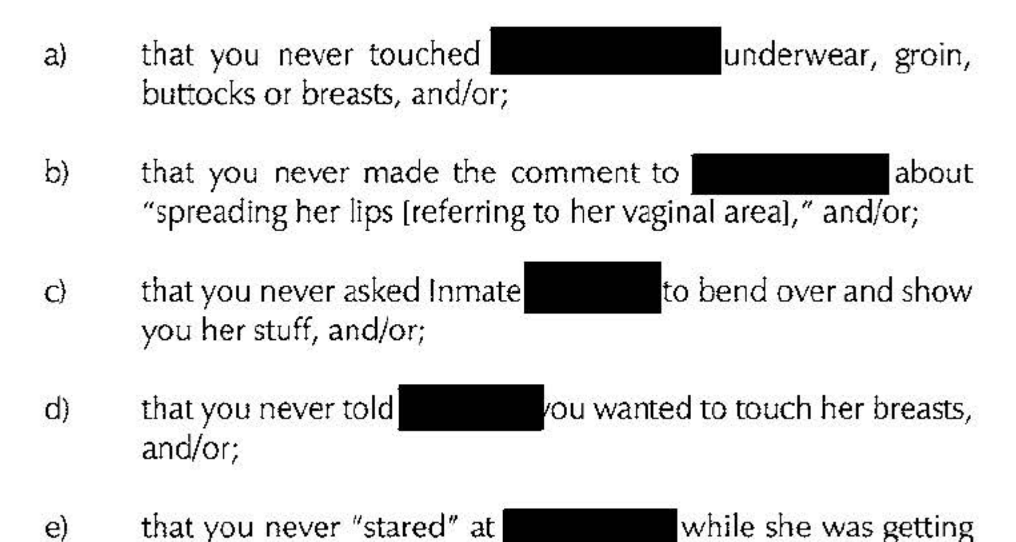
   e) grabbing [redacted] bare buttocks when she tried to pull up her pants, and/or;

   f) asking Inmate [redacted] to take down her pants so you could look at her, and/or;

   g) asking Inmate [redacted] if you could touch the tops of her breasts, and/or;

   h) standing and watching Inmate [redacted] while she put her pants on after she told you to turn around so she could dress in private.

3. That in violation of Manual of Policy and Procedures Section 3-01/040.75, Failure to Make Statements and/or Making False Statements During an Internal Investigation, on or about December 30, 2007 and April 23, 2009, during your ICIB and Internal Affairs Bureau interviews, you made false and/or misleading statements, including, but not limited to:



a) that you never touched [redacted] underwear, groin, buttocks or breasts, and/or;

b) that you never made the comment to [redacted] about "spreading her lips [referring to her vaginal area]," and/or;

c) that you never asked Inmate [redacted] to bend over and show you her stuff, and/or;

d) that you never told [redacted] you wanted to touch her breasts, and/or;

e) that you never "stared" at [redacted] while she was getting dressed.

Even given your version of events concerning this incident, your conduct warrants termination of your employment with the Los Angeles County Sheriff's Department, as evidenced by, but not limited to, the following sections of the Manual of Policy and Procedures:

1. That in violation of Manual of Policy and Procedures Sections 3-01/050.85, Fraternization; and/or 3-01/030.05, General Behavior; and/or 3-01/050.10, Performance to Standards, on or about December 29, 2007, while assigned to work the jailer position at Lancaster Station, you fraternized with and/or did favors for a female prisoner, [redacted] as evidenced by, but not limited to:

   a) allowing [redacted] to use your cellular phone to make a personal phone call, and/or;

   b) asking [redacted] to write her name and cell phone number down on a piece of paper and give it to you.

   The Los Angeles County Sheriff's Department is mandated by the State of California to maintain sole custody of all inmates. In accordance with this responsibility, the Department must maintain a zero tolerance for any behavior on the part of our personnel which violates the basic tenets of our Fraternization policy. Being friendly with, and/or doing favors for, inmates under our care and control opens the Department to potential liability, or complaints of inappropriate conduct against our

personnel. Had you merely been performing your routine duties on the night of December 29, 2007, the three separate complaints lodged against you by female inmates would have less credence. By your own admission, you allowed an inmate to use your personal cell phone and then asked for, and were given, an inmate's personal cell phone number, thereby changing your position of authority to that of a peer. By these actions, you have failed to conform to the work standards established for your position as a deputy sheriff and your actions have brought discredit upon yourself and the Sheriff's Department.

2. That in violation of Manual of Policy and Procedures Sections 3-01/050.10, Performance to Standards and/or 3-01/040.90, Reporting Information, on or about December 29, 2007, you failed to conform to the work standards established for your position as a deputy sheriff, as evidenced by, but not limited to:

   a) failing to notify a supervisor about the fact you loaned your personal cell phone to an inmate so they could make a call, and/or;

   b) failing to notify a supervisor about the fact you had asked for an inmate's personal cell phone number so you could call her after her release from custody, and/or;

   c) failing to tell a supervisor that Inmate [redacted] had exposed herself to you.

You may respond to the intended action orally or in writing. In the event that you choose to respond orally to these charges, you have already been scheduled to meet with Chief Neal Tyler on October 14, 2009, at 1330 hours, in his office, which is located at Sheriff's Headquarters Building, 4700 Ramona Boulevard, Monterey Park, on the 4th Floor. If you are unable to appear at the scheduled time and wish to schedule some other time prior to October 14, 2009, for your oral response, please call Chief Tyler's secretary at [redacted] for an appointment.

If you choose to respond in writing, please call Chief Tyler's secretary to cancel your scheduled appointment, and send your response to the facts contained in this letter to Chief Tyler's office by no later than October 14, 2009.

Unless you are currently on some other type of authorized leave, pursuant to Rule 16.01 of the Los Angeles County Civil Service Commission Rules, effective immediately, you are on paid administrative leave which will continue during the fifteen (15) business days you have to respond to the intended discharge or until the conclusion of your pre-disciplinary hearing. If you are presently on an authorized leave, that leave will continue during the fifteen (15) business days you have to respond to the intended discharge, or until the conclusion of your pre-disciplinary hearing.

Failure to respond to this Letter of Intent within fifteen (15) business days will be considered a waiver of your right to respond and will result in the imposition of the discipline indicated herein.

If you did not receive the investigative material on which your discipline is based at the time you were served with this correspondence, you may contact the Internal Affairs Bureau at (323) 890-5300, to obtain a copy of the case file.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

Karyn Mannis

Karyn Mannis, Captain
Internal Affairs Bureau

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures.

KM:lh

c: Advocacy Unit
Employee Relations Unit
Chief Neal Tyler, FORI
Internal Affairs Bureau
Office of Independent Review (OIR)
(File #2211030)



CIVIL SERVICE COMMISSION

COUNTY OF LOS ANGELES

January 10, 2012

FINAL COMMISSION ACTION

Subject of Hearing: *Petition of* ***WESLEY FENDERSON*** *for a hearing on his* ***discharge,*** *effective October 16, 2009, from the position of Deputy Sheriff, Sheriff's Department,* **Case No. 09-1438.**

The Civil Service Commission, at its meeting held on December 14, 2011, approved findings in the above-entitled case. The objections submitted were overruled.

Since a copy of these findings has already been provided to all the parties, we have enclosed a copy of the signed formal order of the Commission for your records.

Anyone desiring to seek review of this decision by the Superior Court may do so under Section 1085 or 1094.6 of the Code of Civil Procedure, as appropriate. An action under Section 1094.6 can only be commenced within 90 days of the decision.

Lawrence D. Crocker
Executive Director

c: Wesley Fenderson
Deborah B. Wadleigh
Vincent C. McGowan
Mary L. Williams

ROOM 522 KENNETH HAHN HALL OF ADMINISTRATION • 500 W. TEMPLE STREET, LOS ANGELES, CA 90012 • TELEPHONE (213) 974-2411 • FAX (213) 974-2534

BEFORE THE CIVIL SERVICE COMMISSION OF THE

COUNTY OF LOS ANGELES

In the matter of the **discharge**, effective October 16, 2009, from the position of Deputy Sheriff, Sheriff's Department, of: **WESLEY FENDERSON** **(Case No. 09-1438)**	ORDER OF THE CIVIL SERVICE COMMISSION

On December 14, 2011, the Civil Service Commission of the County of Los Angeles, having read the foregoing Findings of Fact and Conclusions of Law, and good cause appearing therefor, over-ruled the petitioner's objections and adopted, as its final decision, the Findings of Fact, Conclusions of Law, and the recommendation of its duly appointed Hearing Officer, Mary L. Williams, to sustain the Department in the discharge. Commissioners Felton and Martinez dissented.

Dated this 4th day of January 2012.

Dissented — EVELYN V. MARTINEZ, President

Dissented — VANGE FELTON, Member

CAROL FOX, Member

LYNN ADKINS, Member

Z. GREG KAHWAJIAN, Member

CERTIFICATE OF MAILING

I, Harry Chang BS, of the Civil Service Commission, do hereby certify: that a true copy of this notice, the original of which appears above, was on this date mailed to the person(s) whose name(s) appear below, addressed as shown, by depositing same in a sealed envelope with postage thereon fully prepaid, in the United States post office mail box at Los Angeles, California.

Date: 1/4/12

WESLEY FENDERSON
C/O DEBORAH WADLEIGH
GREEN & SHINEE
16055 VENTURA BLVD SUITE 1000
ENCINO CA 91436-2680

DEBORAH WADLEIGH
GREEN & SHINEE
16055 VENTURA BLVD SUITE 1000
ENCINO CA 91436-2680

VINCENT C MCGOWAN
HAUSMAN & SOSA
18757 BURBANK BLVD SUITE 305
TARZANA CA 91356-6329

MARY L WILLIAMS



LOS ANGELES COUNTY
CIVIL SERVICE COMMISSION

In the matter of WESLEY FENDERSON, Appellant, and SHERIFF'S DEPARTMENT, Respondent.	CASE NO: 09-1438 RECOMMENDED DECISION, FINDINGS OF FACT AND CONCLUSIONS OF LAW

The hearing in the above-captioned matter was held before the undersigned Hearing Officer on August 17, 2010, October 7, 2010, October 22, 2010, December 20, 2010, January 18, 2011 and March 29, 2011, concerning the appeal by Appellant, WESLEY FENDERSON, (herein "appellant" or "FENDERSON") of his discharge, effective as of the close of business on October 16, 2009, from the position of Deputy Sheriff, Sheriff's Department (Department).

///

INTRODUCTION

Appellant, at all times material herein, was a deputy sheriff with the Sheriff's Department. Appellant was hired as a deputy sheriff by the Department in 2000 at which time he was a police officer with the Compton Police Department. The Compton Police Department merged with the Sheriff's Department at that time. Fenderson signed for and received a number of documents after becoming a deputy sheriff. He did not go through the Department's academy. Fenderson's first assignment was at the North County Correctional Facility (NCCF), a male custody facility, for about five years. Thereafter he was assigned to patrol at the Lancaster station.

The Department was represented by Vincent McGowan. The Appellant was represented by Deborah Schild.

ISSUES

The parties stipulated that the issues in this matter are the following:

1. Are the allegations contained in the Department's letter of October 21, 2009, true?

2. If any or all are true, is the discipline appropriate?

Witnesses called by the Department:

1. [redacted]
2. [redacted]
3. Chief Neal Tyler
4. David Godfrey
5. [redacted]
6. Linda Hemingway

Witnesses called by the Appellant:

1. Sandra Nelson
2. Sheila Wilson
3. Deborah Stone
4. Shelor Young
5. Wesley Fenderson

Los Angeles County Civil Services Rules

Rule 4.12 Burden of Proof states: In hearing on discharges, reductions or suspension in excess of five days, the burden of proof shall be on the appointing power, except that the burden of proving affirmative defenses shall be on the person asserting them..."

Rule 4.10 Evidence states: "B. Hearsay evidence may be admitted for any purpose, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege and of official or judicial notice shall be effective to the same extent as in civil actions. Irrelevant and repetitious evidence shall be excluded. Oral evidence shall be taken only under oath or affirmation."

STATEMENT OF FACTS AND SUMMARY OF TESTIMONY

SUMMARY OF UNDISPUTED FACTS

On Saturday, December 29, 2007, Fenderson was working as a jailer at the Lancaster jail on the evening shift, 2:00 P.M. – 10:00 P.M. (1400 – 2200). The night shift comes on about 9:30 P.M. and the evening shift leaves about 9:45 P.M. Both males and females are housed in the jail which has the capacity to house 58 inmates. The females are generally housed in the four cells in A-row which is the first row of cells to the right off the main hallway as one leaves the administrative area and two booking cells and passes the male detox room and booking cell 3. A-row consists of four cells, two on each side of an interior hallway. At the far end of A-row is a shower. There are video cameras in the front area and the main hallway but not in the rows of cells. The jailers are always concerned about

what's going on in the jail area and monitor the video cameras as a part of their job. There is a door between the main hallway area and A-row which is often kept open and/or unlocked. Sometimes the door is locked and the cell doors are left open so inmates can walk in the cell row hallway and make telephone calls from the pay phones (collect calls only) that are on the walls of the hallways in the row of cells.

[redacted] and [redacted] were all arrested for some form of theft. [redacted] was placed in cell A-1 which is the first cell to the right in A-row. [redacted] was placed in cell A-1 with [redacted] was in cell A-2, immediately across the hall from [redacted] and [redacted] The cells have windows in the upper one-half of the cell door (Ex. 12). There may have been other women in cells A-3 and A-4 shortly before the relevant events on 12/29/2007 occurred but apparently not at the time of the alleged wrongful conduct. The hallway between A-1 and A-2 is about 6' - 7' wide. Each cell is about 9' x 12' and has a double bunk (Ex. L-15). Once [redacted] and the others made their complaints against Fenderson they were separated.

Fenderson had worked the jailer position dozens of times. Exhibit 10 is a diagram of the Lancaster jail. Typically custodial assistants (CA) staff the jails. On the night in question, 12/29/2007, CA Deborah Stone

(CA Stone) was Jailer 1 and Fenderson was Jailer 2. In summary, Jailer 1 performs administrative duties while Jailer 2 performs live scans (digital fingerprinting), escorts inmates to their cells, feeds the inmates and generally oversees the inmates in their cells. The staff is very busy.

The front administrative area consists of an office and two booking cage areas. There is a main hallway from the administrative area which goes to the back of the jail. Just beyond the administrative area is a door into the hallway area. Beyond the door is the live scan room to the left and male detox room and another booking area to the right. The rows of cells start just beyond this area. The custodial assistants, deputy sheriffs, supervisors, detectives and others constantly traverse the main hallway. Some staff is located in the rear of the jail.

Fenderson knew that inmates could use the telephones depicted in Ex. L-7, booking cell 1, and L-8, booking cell 2. Collect calls and free calls to the local area code could be made from these telephones. They would not connect with cell phone numbers. Only collect calls could be made from the phones in the cell row hallways. Inmates are allowed to make three completed phone calls within three hours of their arrival at the jail pursuant to state law (Ex. M). The phones in the booking cells generally

work and the staff operates these telephones, not the inmates. The phones in the rows of cells are often broken.

Inmates can stand on their beds and talk to a vent which allows them to carry on conversations with others in the jail. Conversations from the A-row can be heard in the front administrative area but the details of a conversation may not be audible.

[redacted] had no felony convictions. [redacted] had one felony conviction but could not recall for what at the hearing. [redacted] testified that she had had two felony convictions, one in 2005 for fraud (cashing checks) and one in 2007 or 2008 for robbery (stereo).

Preliminarily, there was significant inconsistent testimony between what [redacted], [redacted], [redacted] and Fenderson testified to at the hearing and what they reported in their interviews with the Internal Criminal Investigation Bureau (ICIB) investigators who interviewed all of them 12/30/2007. The same is true of Fenderson's testimony and his 4/23/2009 IAB interview. The significance of each and every factual inconsistency is important in trying to sort out what the facts are in this case and what really happened in the interactions between Fenderson, [redacted], [redacted] and [redacted] on 12/29/2007.

The allegations involving Fenderson as set forth in the 10/21/2009 letter of discharge (Ex. 2) are the following.

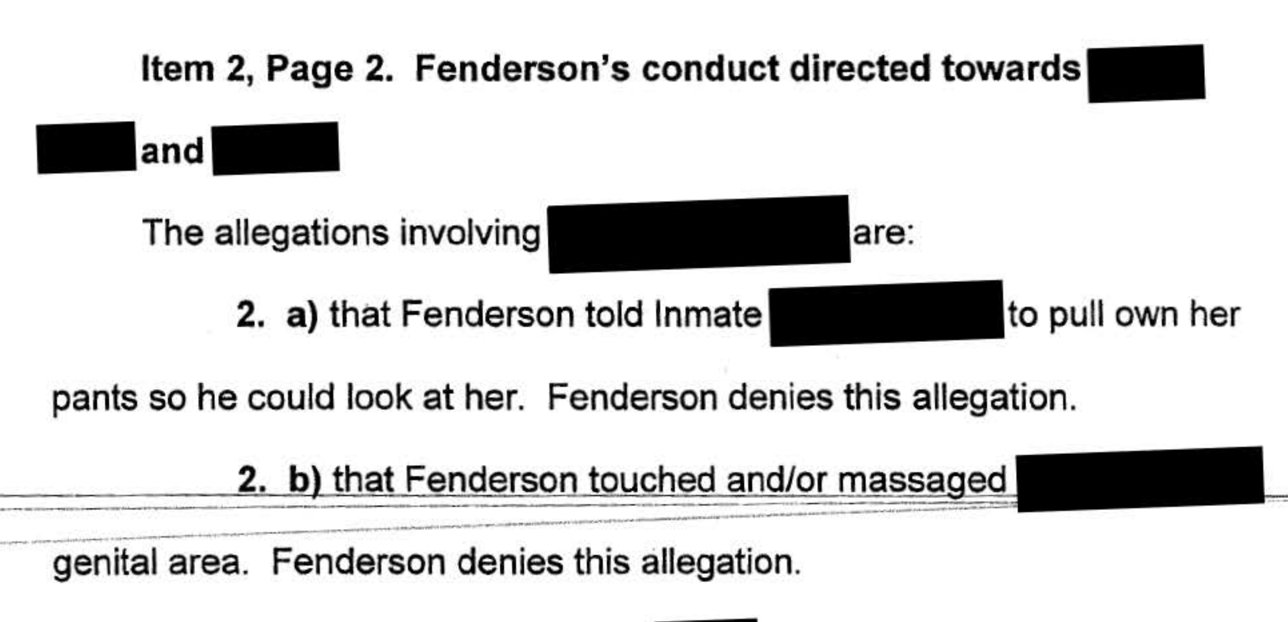
Allegations in Item 1, Page 1 – 2.

1. a) That Fenderson allowed [redacted] to use his cellular telephone to make a personal telephone call. Fenderson admits that he allowed [redacted] to use his cellular telephone to make a personal telephone call.

[redacted] used Fenderson's cell phone to check for messages on her cell phone and to contact her cousin. She wanted to find out if her fiancé was still in custody as they were arrested at the same time. [redacted] asked to use Fenderson's cell phone and he let her use it in the A-row hallway. Earlier Fenderson took [redacted] to the free phone in the booking area but she was not able to complete her calls from that telephone as it only allowed calls within the local area code and collect calls. Also, it would not connect to cell phone numbers.

1. b) That Fenderson asked [redacted] to write her name and cell phone number down on a piece of paper and give it to him. Fenderson admits that he provided [redacted] with a piece of paper and a pen for her to write her name and cell phone number down. She wrote her name and cell phone number on the paper and gave it to him just before

the end of his shift. He placed the piece of paper in his personal bag as he was going off duty. He provided that piece of paper (Ex. 13) to the ICIB investigators in his 12/30/2007 interview with them. There is a factual dispute as to whether Fenderson initially asked for [redacted] name and telephone number or if [redacted] initially offered it. In any case, there is no dispute that Fenderson told [redacted] to write down her name and telephone number and provided her with the pen and paper to do it, which she did.



Item 2, Page 2. Fenderson's conduct directed towards [redacted] and [redacted]

The allegations involving [redacted] are:

2. a) that Fenderson told Inmate [redacted] to pull own her pants so he could look at her. Fenderson denies this allegation.

2. b) that Fenderson touched and/or massaged [redacted] genital area. Fenderson denies this allegation.

2. c) that Fenderson told [redacted] to "spread your lips (referring to her vaginal area)", which Fenderson denies. After questioning by the parties, the **Hearing Officer** asked [redacted] if Fenderson told her to spread her lips, referring to her vaginal area, and her answer was "no."

2. d) that Fenderson pulled up [redacted] shirt and grabbed her

bare breasts underneath her bra, which Fenderson denies. After questioning by the parties, the **Hearing Officer** asked [redacted] if Fenderson pulled up her shirt and grabbed her bare breasts underneath her bra and her answer was "no."

2. e) that Fenderson grabbed [redacted] bare buttocks when she tried to pull up her pants, which Fenderson denies. After questioning by the parties, the **Hearing Officer** asked [redacted] if Fenderson grabbed her bare buttocks when she tried to pull up her pants and her answer was "no."

The allegations involving [redacted] are:

2. f) that Fenderson asked [redacted] to take down her pants so he could look at her, which Fenderson denies. After questioning by the parties, the **Hearing Officer** asked [redacted] if Fenderson asked [redacted] to take down her pants so he could look at her. [redacted] testified that she could not recall if this occurred.

2. g) that Fenderson asked [redacted] if he could touch the tops of her breasts, which Fenderson denies. After questioning by the parties, the **Hearing Officer** asked [redacted] if Fenderson asked [redacted] if he could touch the tops of her breasts. [redacted] testified that she could "vaguely" remember this occurring.

The allegation involving [redacted] is:

2. h) that Fenderson stood and watched [redacted] while she put her pants on after she told him to turn around so she could dress in private, which Fenderson denies. After questioning by the parties, the **Hearing Officer** asked [redacted] if Fenderson stood and watched [redacted] while she put on her pants after she told him to turn around so she could dress in private and her answer was "no."

FACTS INVOLVING ALLEGATIONS BY [redacted]

[redacted] **TESTIMONY**

[redacted] testified that she was unable to make any calls from the phones in the booking cell. She then asked Fenderson if she could use his cell phone to call her cousin (not her cell phone) and that he permitted her to do so in the A-row hallway. She did call her cousin and her cell phone for messages. The door from A-row to the main hallway was cracked open.

[redacted] testified that, after he let her use his cell phone and while she was still in the A-row hallway in front of her cell, Fenderson told her to pull her pants down and bend over, which she did. He then rubbed her vagina

for about five seconds. [redacted] did not ask Fenderson to touch her and he did not ask her if he could touch her. [redacted] felt violated. After he touched her he never returned to the cell area. At some point he told her that he would call her. [redacted] told [redacted] that she was going to tell the next officer who came on duty.

After Fenderson touched her he asked her for her cell phone number and she wrote it down for him. Fenderson never called [redacted]

[redacted] TESTIMONY RE ALLEGATIONS INVOLVING [redacted]

When [redacted] asked Fenderson if she could use his cell phone he replied OK if he could touch her pussy. [redacted] could hear [redacted] on the cell phone in the hallway. After she hung up [redacted] could hear [redacted] pants open but could not see anything. Fenderson turned out the lights when [redacted] was in the hallway using his cell phone. [redacted] was kind of scared. She could hear Fenderson moaning and whispering but she does not know what he was saying. [redacted] kept saying "get away." When [redacted] came back into the cell she was crying. [redacted] said that Fenderson touched her private parts, pulled down her pants and touched her "coochie." She started scaring [redacted] asked [redacted] if she was OK and [redacted] responded "no." [redacted] told a female jailer what happened after Fenderson did not come back any more.

[redacted] TESIMONY RE ALLEGATIONS INVOLVING

[redacted] asked [redacted] to ask Fenderson if she could use his cell phone. He let [redacted] use it in the hallway and [redacted] heard [redacted] talking. [redacted] started crying and screaming after she was back in her cell and the lights went out. She said that Fenderson put his finger in her privates and that she wanted to tell a supervisor. [redacted] told the sergeant that she was sexually assaulted. Sylvie did not know what had happened before [redacted] told her. She did not see Fenderson touch [redacted]

FENDERSON TESTIMONY RE ALLEGATIONS INVOVLING

[redacted] Fenderson testified that as a jailer he understood that inmates could use the telephone when they arrive at the custodial area. They can also use the pay phones in the hallways. Generally, and on 12/29/2007, he kept the door from A-row to the hallway open so he did not need to unlock it as they were busy. [redacted] and [redacted] had a lot of requests that night, such as asking to use the telephone, asking for more food and asking for a new mattress [redacted]

Late in the shift Fenderson escorted [redacted] to use the phone in the booking area. He left her there 15 – 20 minutes and then escorted her back to her cell. She asked to use his cell phone several times because she could not get her calls to go through. Initially he said "no" because it

was near the end of his watch and he was focused on going home. Eventually he said "yes." Fenderson closed the door to the main hallway and let [redacted] use his phone in the A-row hallway. He walked out of the A-row while she was using his phone. When he came back he retrieved his phone from her. Fenderson did not believe that he was violating the fraternization policy as he knew that inmates could use the other phones in the jail.

Fenderson had never before let an inmate use his cell phone. [redacted] told him that she had not made any calls since she had been booked. Because of the circumstances he did not think that it violated the fraternization policy to let an inmate use his cell phone. He did not think that there could be negative consequences to her using his cell phone such as people plotting to do harm against the Lancaster Station. Inmates' calls were not monitored in the booking area. He did not think that he was providing a personal favor to [redacted] He did not think that it was a "big deal." He let her use his telephone because he is a "nice guy." He did not think that he needed a supervisor's approval to allow [redacted] to use his cell phone.

Fenderson denied that he asked [redacted] for her telephone number. He testified that after [redacted] used his cell she asked him if he wanted anything

from her and he responded "no." She told him to write down her cell phone number. He did not write it down but told her to do so. Fenderson admits that he gave her the paper and pen to use to write down her number after she was back in her cell (Ex. 13). He felt uncomfortable in the situation as he did not want her cell number. He joked around with her and asked if her cell number was real or not. He did tell her that he would call her later "in a joking way." This was his way "of playing off the whole situation." He wanted to end the situation and not be confrontational. He did not put her cell number in his cell phone which was confirmed in the investigation. He did not intend to call her when she got out of jail. He did not throw the number out as he has lots of clutter in his car. He did not think that taking her telephone number was a violation of the fraternization policy. He never took any other inmates' telephone numbers. He jokes with a lot of inmates as he believes that such an approach is non-confrontational.

In response to a question on direct examination if he flirted with [redacted] Fenderson testified that he was being nice and smiling and trying to get out of the situation the best he could. He did not want to cause her or him embarrassment. He felt uncomfortable in the situation. He testified that it probably wasn't the "brightest" thing that he did. He had his bag with

him in A-row as he was ready to leave directly from there for home. He did not tell his supervisor what happened.

Fenderson allowed people to use his cell when he was on patrol, for example if someone needed to call a tow vehicle. Other patrol officers do the same. His cell phone number is on his business card (Ex. N).

Fenderson testified that [redacted] grabbed at the waistband of her jeans but that she did not pull them down. He did not see skin, her underwear, her vagina or pubic hair. He saw some of her stomach. She was wearing a low cut shirt to the edge of her pants so it went up when she reached down. She acted as if she was going to pull down her pants. In his ICIB interview (Ex. 5, p. 20 – 21 and 32) he told the investigators that [redacted] exposed her underwear and that she pulled down the button area of her pants. When asked if he could see her pubic hair he replied "It was light" (Ex. 5, p. 32). He told [redacted] that he wasn't looking for anything from her. He assumes that she reached in her underwear when she reached in the fly area. He believed that he handled the situation well and that there was no need to tell his supervisor. [redacted] did not pull her pants down.

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FACTS INVOLVING ALLEGATIONS BY [redacted]

[redacted] TESIMONY

As previously set forth, [redacted] testified that she did not recall if Fenderson asked her to take down her pants so he could look at her. She had only a vague memory of Fenderson asking to touch the tops of her breasts but she did recall that he asked to see her breasts at some point. She responded essentially "why should I let you – you can't get me out." She does not recall that he pulled her shirt up or that he made contact with her shirt.

At some point [redacted] told Fenderson that she needed another mattress because she had back problems and he got her one. She testified that when he threw the mattress on the floor she bent over and he touched her in between her legs from behind. She did not report this in her 12/30/2007 ICIB interview (Ex. 34). She jumped and said "what the fuck are you doing?"

[redacted] felt violated. She testified that Fenderson had no reason to put his hands on her. She had just found out that she had cancer.

[redacted] denies that she flirted with Fenderson, that she said "you be good to me and I'll be good to you" or that she told [redacted] that she was going to teach her a few things.

Fenderson denies that he touched [redacted] in an inappropriate way. He gave her another mattress but he never went into the cell. She asked for food and said that she would be good to him or look him up, something like that. She was touching her body in a provocative way. She was being really flirty. It was customary for female inmates to say flirty things. He just passed it off and chuckled.

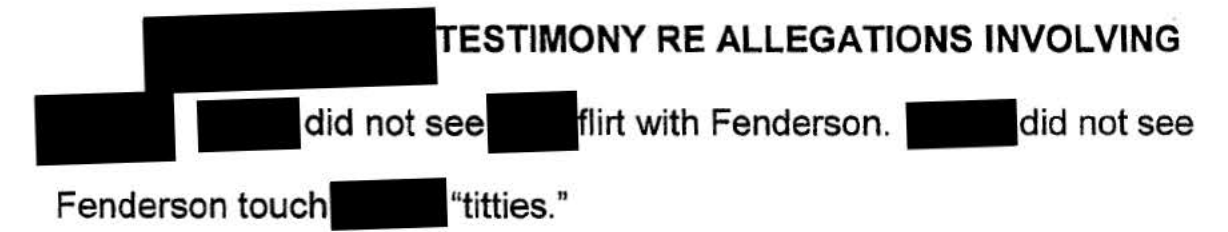
In her 12/30/2007 ICIB interview (Ex. 35) Byrd stated that Fenderson asked her to take off her panties. This was when [redacted] was out of the cell area. [redacted] did not take them off. He wanted to touch her behind. After he brought [redacted] back to the cell he brought them food. Then Fenderson took [redacted] out of the cell again and shut the lights off again and that's when he said that he wanted to touch the top part of her breast and she told him "no." During this time [redacted] was talking on the phone in the A-row hallway.

[redacted] testified that she has some mental issues. She has [redacted]

[redacted] TESTIMONY RE ALLEGATIONS INVOLVING

[redacted] [redacted] testified that [redacted] was drunk when she came into her cell. She also testified that [redacted] was flirting with Fenderson and laughing and giggling. She heard [redacted] tell Fenderson "you be good to me, I'll be good to you." [redacted] saw [redacted] pull up her shirt and show Fenderson her "titties" at

which time Fenderson told [redacted] that she was a "bad girl." [redacted] did not see Fenderson touch [redacted]. [redacted] told [redacted] that she would teach her a thing or two.



[redacted] TESTIMONY RE ALLEGATIONS INVOLVING [redacted]

[redacted] did not see [redacted] flirt with Fenderson. [redacted] did not see Fenderson touch [redacted] "titties."

FENDERSON TESTIMONY RE ALLEGATIONS INVOLVING [redacted]

Fenderson denied that he ever touched [redacted] in an inappropriate way. He gave her a new mattress as the one she had was all worn out. He opened the cell door and tossed the mattress inside. He did not enter the cell.

[redacted] asked for food and said to him "you be good to me, I'll be good to you." She lifted her blouse and exposed her stomach area but not her breasts. She was touching her body and moving in a provocative way but she wasn't serious. She was being "real flirty." She said that she would hook him up with her cell mate. Fenderson replied "no" but said he would get food. She wanted him to let her out of the facility and he said he couldn't do that. It's customary for inmates to say flirty things. He just laughed it off. He never touched her.

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FACTS INVOLVING ALLEGATIONS BY [redacted]

[redacted] TESTIMONY

As set forth above, [redacted] denied at the hearing that she asked Fenderson to turn around so she could dress in private but he did not and he stood and looked at her while she put on her pants. [redacted] testified that she turned around to put her pants on so she could use the telephone and that she did not know where Fenderson was looking when she turned around.

However, she told the ICIB investigators that she told Fenderson to turn around so she could put her pants to use the cell phone but he did not turn around (Ex. 30, p. 3). [redacted] testified that her memory is not as good as it used to be in 2008 – 2009, maybe because of an on-the-job injury that occurred after she went back to work as an airline mechanic after her ~~second felony conviction.~~

[redacted] testified that she took her pants off and was lying down in her panties and shirt under a sheet. She testified that Fenderson asked why her pants were off and that she said that she didn't sleep in her clothes. He would come by her cell and gawk at her which made her feel uncomfortable. She told Fenderson that she needed to use the phone to

call her family. She put her pants on before Fenderson took her to the booking area to use the phone.

[redacted] testified that, as he was walking behind her to take her to the booking area to use the phone, Fenderson reached in back of her and touched her in her "private parts" from behind. This made her nervous. She "likely jumped out of my skin" and said to him, "please don't do that." She walked faster. [redacted] did not report this incident to the ICIB investigators in her 12/30/2007 interview. What she told the investigators was that he "like brushed up against me when he was taking me to the phone" and she walked faster (Ex. 30, p. 9), but did not state that he had touched her private parts from behind. He did tell her to zip up her fly but it was already zipped.

[redacted] testified that after she got back to her cell she asked Fenderson if she could use his cell phone. He handed it to her in her cell and she made another call. She did not tell the ICIB interviewers that he let her use his cell phone. She testified that maybe she was scared. Fenderson did not ask her for her cell phone number or any personal information.

Later when she was back in her cell she asked Fenderson to bring her some sanitary pads which he did. She did that so maybe he would leave her alone.

[redacted] got an attorney after this incident. She entered into a settlement agreement with the County, Sheriff's Department and Fenderson on 8/5/2009 (Ex. 27).

[redacted] TESTIMONY RE ALLEGATIONS INVOLVING

[redacted] does not know what, if anything, Fenderson did to her. She did not see Fenderson touch [redacted] However, after [redacted] said that she was going to report to other officers what Fenderson did to her, [redacted] said that he touched her too. She said that he "touched my titties."

[redacted] TESTIMONY RE ALLEGATIONS INVOLVING [redacted]

[redacted] could not hear what Fenderson said to [redacted] She just heard voices.

FENDERSON TESTIMONY RE ALLEGATIONS INVOLVING

[redacted] When [redacted] asked to use the telephone he said he would let her use it when he had time, the same as he told [redacted] He noticed that she was lying on her bed with her shirt on and a blanket over her but her pants were on the bed. He told her to put on her pants. She told him that she dresses this way all of the time and he told her that she must wear her pants in the cell. His next interaction with [redacted] was when he came to her

cell and took her to the booking area to use the phone. He knocked on her window and opened the door to take her to the booking area telephone. Her pants were on at that point. She did not have her buttons secured and he told her to secure them as there were trustees in the hallway.

Item 3. Page 2 - 3. Fenderson failed to make and/or made false statements during an internal investigation on or about December 30 2007 during his ICIB interview and on or about April 23, 2009 during his IAB interview including, but not limited to, the following:

3. a) that Fenderson never touched [redacted] underwear, groin, buttocks or breasts. The discussion follows hereinafter.

3. b) that Fenderson never made the comment to [redacted] about "spreading her lips [referring to her vaginal area]". [redacted] reported this in her ICIB interview (Ex. 34). At the hearing [redacted] denied that Fenderson ever said this to her. Fenderson denied that he ever said this to her. **DISCUSSION:** The Department did not prove by a preponderance of evidence that Fenderson told [redacted] to "spread her lips", referring to her vaginal area. In making this finding the Hearing Examiner also relied on Civil Service Rule 4.10 that hearsay evidence is not sufficient in itself (absent exceptions not relevant here) to support a

finding and the only evidence that supports this allegation is what [redacted] reported to the ICIB investigators which is hearsay.

3. c) that Fenderson never asked [redacted] to bend over and show him her "stuff." At the hearing [redacted] did not recall if Fenderson asked her to bend over and show him her "stuff." Fenderson denied that he asked [redacted] to bend over and show him her "stuff." **DISCUSSION:** The Department did not prove by a preponderance of the evidence that Fenderson asked [redacted] to bend over and show him her "stuff." In making this finding the Hearing Examiner also relied on Civil Service Rule 4.10 that hearsay evidence is not sufficient in itself (absent exceptions not relevant here) to support a finding and the only evidence that supports this allegation is what [redacted] reported to the ICIB investigators, which is hearsay.

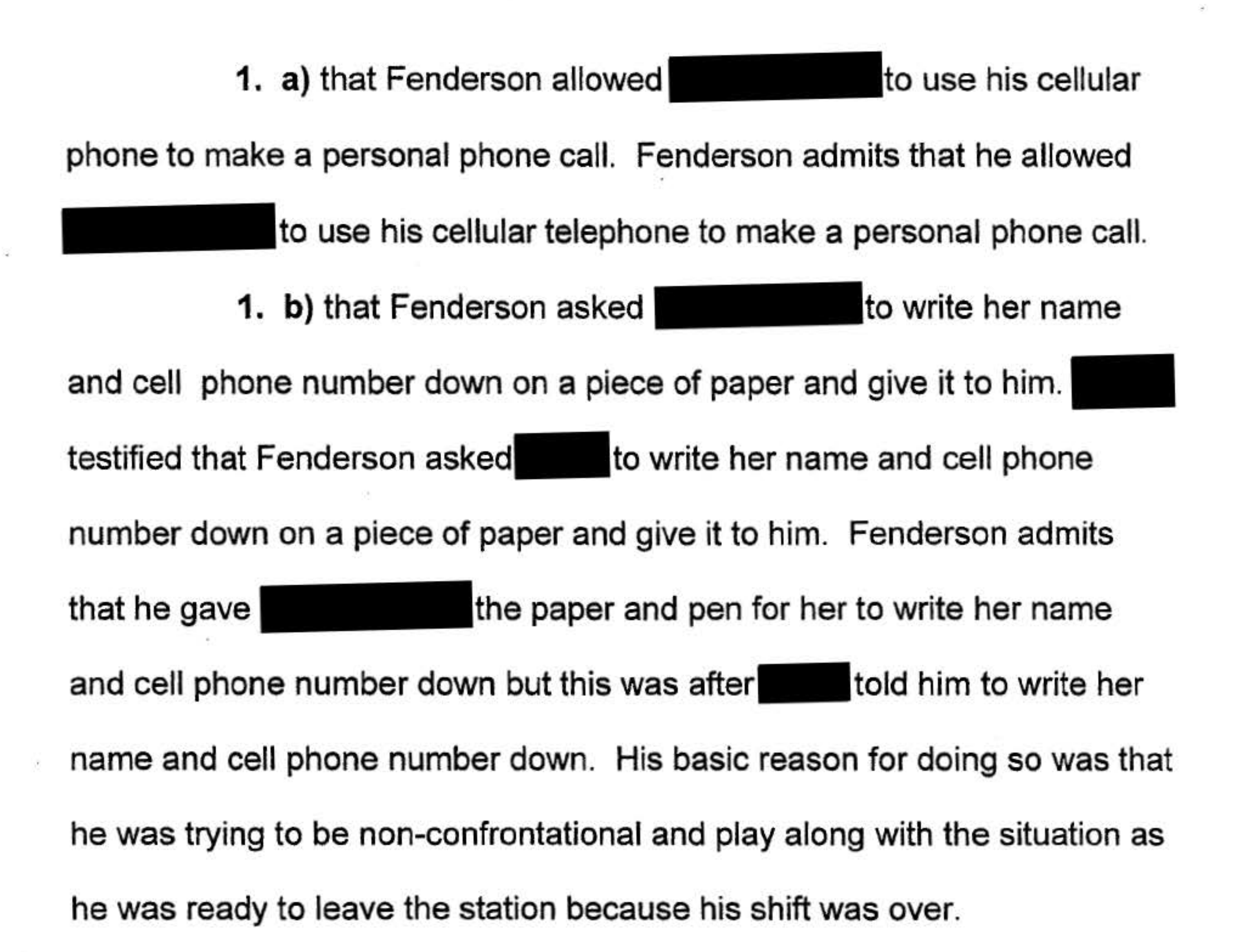
3. d) that Fenderson never told [redacted] that he wanted to touch her breasts. At the hearing [redacted] testified that she only had a "vague memory" that Fenderson ever said this to her. Fenderson denied saying this to [redacted] **DISCUSSION:** The Department did not prove by a preponderance of the evidence that Fenderson told [redacted] that he wanted to touch her breasts. [redacted] "vague memory" is not sufficient evidence to make a finding of fact that Fenderson told [redacted] that he wanted

to touch her breasts. Combining her "vague memory" with her hearsay statement given to the ICIB investigators is still not sufficient evidence to find that Fenderson told [redacted] that he wanted to touch her breasts.

3. e) that Fenderson never "stared" at [redacted] while she was getting dressed. At the hearing [redacted] denied that she told Fenderson to turn around so she could dress in private and that he stared at her while she was putting on her pants. She testified at the hearing that she turned around to put on her pants so she could use the telephone and that she did not know where Fenderson was looking when she turned around.

Fenderson testified that, when he was ready to walk her to the front area to use the telephone, [redacted] pants were on but that the buttons were unhooked and he told her to hook them. [redacted] denied that the buttons were unhooked. Fenderson denied that he watched [redacted] while she put on her pants. The Department did not prove by a preponderance of the evidence that Fenderson watched inmate [redacted] while she put on her pants.

Item 1. Page 3. That on 12/29/2007 Fenderson fraternized with and/or did favors for [redacted] as evidenced by, but not limited to:



1. a) that Fenderson allowed [redacted] to use his cellular phone to make a personal phone call. Fenderson admits that he allowed [redacted] to use his cellular telephone to make a personal phone call.

1. b) that Fenderson asked [redacted] to write her name and cell phone number down on a piece of paper and give it to him. [redacted] testified that Fenderson asked [redacted] to write her name and cell phone number down on a piece of paper and give it to him. Fenderson admits that he gave [redacted] the paper and pen for her to write her name and cell phone number down but this was after [redacted] told him to write her name and cell phone number down. His basic reason for doing so was that he was trying to be non-confrontational and play along with the situation as he was ready to leave the station because his shift was over.

Item 2. Page 4. That Fenderson failed to do the following on 12/29/2007:

2. a) Notify a supervisor about the fact that he loaned his personal cell phone to an inmate so she could make a call. Fenderson admits that he failed to notify a supervisor that he loaned his personal cell phone to an inmate so she could make a call.

2. b) Notify a supervisor about the fact that he asked for an inmate's personal cell phone number so he could call her after her release from custody. Fenderson admits that he failed to notify a supervisor that he asked for an inmate's personal cell phone number. He denies that the reason he failed to notify a supervisor was so that he could call [redacted] after her release from custody as he had no intention of calling her. Fenderson testified that he did not ask for [redacted] phone number but that she told him to write it down. Fenderson testified that he did not write it down but gave her a pen and pencil to write it down because she asked him to write it down.

This was unprofessional on Fenderson's part. Fenderson was a professional and, as Chief Tyler testified, it would be appropriate for a deputy to tell an inmate to "knock it off" if she was doing something inappropriate. The very least he should have done was notify a supervisor. Fenderson was either unwilling or unable to make the appropriate decision regarding giving [redacted] a paper and pen to write her cell phone number down regardless of whether [redacted] wanted to give Fenderson her cell phone number or he asked for her cell phone number.

2. c) Notify a supervisor that Inmate [redacted] exposed herself to him. There was evidence that inmates routinely "flirted with"

jailers. There was no evidence that inmates routinely exposed themselves to jailers. Fenderson had worked as a jailer on numerous occasions. Neither Fenderson nor any of the four custody assistants who testified reported that inmates routinely exposed themselves to jailers. This fact alone should have led Fenderson to know that [redacted] conduct was sufficiently out of the ordinary that he should have reported it to a supervisor.

Fenderson also testified that he signed the Fraternization Policy on 8/24/2000 (Ex. 24). He does not recall ever seeing the policy on cell phones which was revised after he was working Lancaster patrol (Ex. 29). Sgt. Godfrey would go over things including fraternization but he doesn't recall who briefed what. He understood that fraternization involved not becoming too personal with inmates or doing favors for them such as giving them a knife to eat dinner. Most briefings about fraternization were about accepting money and gifts, not cell phones. Fenderson was not concerned that [redacted] would use his cell phone for contraband or to further a crime. He believed that his judgment was sound. She was in for a misdemeanor. They don't ask who they're calling when they use the jail phones.

Fenderson testified that when he went to work on 12/30/2007 he was escorted back to the office and that ICIB investigators were there. They

conduct criminal investigations. He was shocked and wondered why he was there. He was scared about what they were telling him. He is generally shy and he often talks slowly and hesitates. Because of the circumstances his mind was racing. He did not believe that he had done anything wrong and he couldn't believe the questions. He cooperated with the investigators. He gave them the piece of paper with [redacted] name and cell phone number on it. They asked to look at his cell phone and he complied. They asked if he called or received any calls from [redacted] and he said "no."

[redacted] told the ICIB investigations that she was calling her cell phone number "or something like that." In answer to a compound question in his ICIB interview, "did you ask for her phone number and her name? And did you give her a pencil and paper to write her name and phone number down" Fenderson replied "I did" (Ex. 16, p. 17). When asked why he did it he stated that he "was just flirting with her." He told her that he would call her after she got out. The investigators stated "so you asked her for her phone number and her name..." and then asked him what color the paper was. Fenderson did not correct the ICIB officers that he did not ask her for her telephone number. He reported that [redacted] – something about a favor – and that's when he asked her for her telephone number (p. 18).

On redirect examination Fenderson explained that in his IAB interview he was trying to explain how he got [redacted] phone number. He agrees that one could interpret "write it down" as asking for her phone number. She unbuttoned her pants when he told her to write down her phone number.

Sgt. DAVID GODFREY (Sgt. Godfrey) testified that he has been with the Sheriff's Department for 26 years. He is the senior in charge of training in numerous subject areas at NCCF. He is involved in training new deputies for three months at the Sheriff's academy. He was assigned to [redacted]

Sgt. Godfrey oversaw Fenderson's training in the custody program and signed him off. He trained people in fraternization when Fenderson was there. Exhibit 21 is a letter dated 1/12/2001 that was sent to Fenderson [redacted] Exhibit 22 is the checklist of training points, including "Fraternization" that Fenderson would have completed at NCFF or Sgt. Godfrey would not have passed him. Fenderson's checklist could not be located. Additionally, deputies are given recurrent briefings.

Two key aspects of the fraternization policy are that a deputy is not to have any kind of a personal relationship with an inmate and that he is not to do favors for an inmate that are not within his professional responsibilities. For example, deputies are not to loan people money or have a relationship with them or their families and friends after they leave jail. Sgt. Godfrey would send out electronic briefings every so often but only to NCCF staff (Ex. 31). If deputies have questions they can always ask the staff and their supervisors.

Sgt. Godfry reviewed the ICIB interview of Fenderson and the three inmates who complained about him as well as the investigation (Ex. 4). In his opinion Fenderson violated the fraternization policy. Fenderson admitted to doing favors for the inmates such as allowing them to use his cell phone to make personal telephone calls, obtaining the name and the telephone number of [redacted] developing a personal relationship with inmates and using personal and sexual words with the inmates. Fenderson should have advised his supervisor if he needed an inmate's telephone number. Once he asked for [redacted] cell phone number and wrote it down it is the start of a personal relationship and it is irrelevant if he called her or not. Anyone who spent [redacted] would know not to ask for an inmate's telephone number and it is also common sense for a police officer.

On **cross–examination** Sgt. Godfrey testified that he does not know if Fenderson went through the Department's three month academy course. Fenderson's [redacted] He does not think that Fenderson attended the jail operations two week course for new deputies which probably included an hour on the fraternization policy. The training points checklist, Ex. 22, stays at NCCF until a deputy transfers. Sgt. Godfrey has a record that he sent the file to Lancaster when Fenderson transferred there but he understands that the Lancaster station staff cannot find his file. Every possible fraternization policy violation is not covered in training. The fraternization with inmates policy, Ex. 31, was in place when he took over the job.

Based on his training and experience it is his opinion that Fenderson violated the fraternization policy. Fenderson admits to doing favors for the three women. He admits that he let two of them use his cell phone to make personal telephone calls which involves officer safety issues among other things. He asked for [redacted] name and telephone number. He developed a personal relationship with [redacted] while she was in custody. He used sexual words with her. He loaned his telephone to her to get her telephone number. He should have alerted his supervisor if an inmate needed to use a telephone out of the ordinary telephone usage pattern. Whether

Fenderson called [redacted] or not is irrelevant as he started a personal relationship. No one in the Department asked him to give an opinion about Fenderson's violation of the fraternization policy. Many people said that Fenderson was "a happy go lucky guy" and no one had any negative things to say about him.

FOUR JAILERS TESTIFIED.

Custodial Assistant Sheila Wilson (CA Wilson) testified that she has worked at the Lancaster station jail for over 14 years and has worked for the Sheriff's Department for 23 years. She has worked with Fenderson many times as a jailer. She is the more experienced jailer and has a more senior position in the jail than Fenderson. At least two jailers work each shift. Generally Jailer 1 works in the administrative area and Jailer 2 works in the custodial area in the back of the jail. Deputies, supervisors and detectives are in the back of the lockup area in addition to Jailer 2.

CA Wilson testified that Fenderson always acted professionally in his work. He always had a smile on his face. He did his job. She can see and hear inmates in the A-row from the office but cannot hear normal tone conversations. She monitors the video cameras in the main hallway. CAs constantly check on their partners.

The policy and practice is that inmates are to have access to telephones to make three telephone calls within three hours of booking (Ex. M). They are allowed to make daily telephone calls. The phones in the administrative area access the local area code and can also be used to make collect calls.

CA Wilson has observed female inmates flirt with male jailers for all kinds of things. She can "see through" the female inmates when she is working the lockup area. CA Wilson worked the day shift on 12/29/2007 [redacted]

CA Wilson recalls the interactions of the three relevant women in A-row on 12/28/2007 and 12/29/2007. One night they were raucous but she does not know which night. It was a party atmosphere. They were loud. That heightens the anxiety of all inmates so she told them to "knock it off." [redacted] told her that [redacted] was her [redacted] CA Wilson was trying to figure out if they knew each other. CA Wilson went back to the A-row again when they got too loud.

When she arrived at work on 12/30/2007 she was told that Fenderson was relieved of duty. She escorted the three women to their ICIB interviews. [redacted] appeared timid and at first she did not want to come out of her cell. [redacted] and [redacted] also appeared hesitant to leave their cell.

CA Wilson has never observed Fenderson to acting inappropriately with female inmates. He is conscientious and detail oriented. She has worked with him probably 50% of the time in the last two years. Normally they work different shifts unless one of them works overtime.

Custodial Assistant Deborah Stone (CA Stone) has worked as a jailer since 1996 and at the Lancaster jail since 2007. She has probably worked with Fenderson over 100 times. She worked as Jailer 1 with Fenderson on 12/29/2007. She was on light duty and could not escort inmates. She did not go back to the jail area often during her shift. She did not see or hear Fenderson do anything wrong during the shift. If the door is open she can hear.

CA Stone does not see what a jailer is doing in the rows of cell blocks as there are no cameras in those areas. She would not report inmates' cat calls or flirtatious behavior to a supervisor. She would report any deputy who acted inappropriately.

CA Stone has never heard any inmate complain about Fenderson. She has never seen or heard him act inappropriately.

Custodial Assistant Shelor Young (CA Young) has worked as a jailer for 14 years and as a jailer at Lancaster station since 2006. She

worked with Fenderson for a couple of months in 2007. Every day male inmates flirt with female inmates and vice versa.

When [redacted] was incarcerated in the Lancaster jail some time later she said "I got one deputy fired. I'll get all of you fired." When [redacted] returned to the jail two deputies brought her to the station. The deputies had CA Young go out to the car to bring her in as they were afraid of what she might say. CA Young never saw Fenderson do anything wrong. He's a "gentle giant." His behavior with inmates was always professional. CA Young does not think that she worked the evening shift on 12/29/2007. She knows that it is not appropriate to give a cell phone to an inmate to make a call.

Custodial Assistant Sandra Nelson (CA Nelson) has worked for the Sheriff's Department since 1991 and has been a jailer at Lancaster since July 2004. She has worked with Fenderson as a jailer on numerous occasions. The jail telephones are often difficult for inmates to use. Generally the jail phones do not dial cell phone numbers. On occasion she has used the County telephone and dialed a number for an inmate. She can hear voices in the cell area when she works as Jailer 1. She hears female inmates speak every day. They yell to females in other rows. They bond easily.

CA Nelson started to work her night shift at 2200 on 12/29/2007. She turns on all of the lights, counts the inmates and wakes them all up to talk to them to make sure that they are alive when she starts her shift. Fenderson worked the prior shift and if he did not do something she would have to do it. [redacted] was standing at the window in her cell and said that she wanted to file a complaint against a deputy. CA Nelson thought that it was a deputy in the field. If she had known that it was Fenderson she would have asked her what her complaint was. She may have heard an inmate say that he/she wanted to file a complaint about two times in her career. Generally if inmates have a complaint they complain to her. [redacted] did not appear distressed. She was "haughty and demanding." CA Nelson told her that she would get someone and she went to Sgt. Hill and told him that an inmate wanted to make a complaint. She does not know when Sgt. Hill talked to [redacted]

CA Nelson has never heard an inmate complain about Fenderson. He was "happy go lucky." She let an inmate use her cell phone one time when it involved a Korean interpreter and a three way conversation.

LINDA HEMINGWAY (Hemingway) testified that she retired from the Sheriff's Department in January 2010. Her last position was as the Senior

Department Employees Relationship Representative. Her position involved writing, amending and rewriting the charges in the Disposition Sheet, the letters of intent and the letters imposing discipline. She wrote the charges involved in the instant case. The chiefs know that she finalizes the charges. The chief determines whether or not the charges are founded. Also, a chief can always overrule her.

Chief NEAL TYLER (Chief Tyler) has been with the Sheriff's Department for over 35 years. He oversees eight sheriff's stations. He carefully reviewed the investigative file and recommended discipline. It was reviewed by two assistant sheriffs and the undersheriff. Chief Tyler believed that discharge was the appropriate discipline for Fenderson because of the seriousness of the charges and the evidence supporting the charges. He listened to the recording of Fenderson's ICIB interview and read the transcripts of the three inmates' ICIB interviews. He read the transcript of Fenderson's IAB interview (Ex. 6). He read the report of Cpt. Carl Deeley, the Lancaster station captain on 12/29/2007 (Ex. 7), who talked to [redacted] in the presence of Sgt. Robert Hill after he was notified by CA Nelson about 0030 on 12/30/2007. [redacted] reported to Cpt. Deeley that she had been sexually assaulted by a black male

deputy jailer who matched Fenderson's description, that he had asked for her telephone number and that she refused to give it to him. Thereafter he let her use his cell phone. After [redacted] phone calls Fenderson directed her to pull down her pants as payback for allowing her to use his cell phone, that she complied and that Fenderson then pulled her panties down and groped her bare buttocks.

Fenderson acknowledged that he did some things and denied that he did other things, such as touching the inmates. Chief Tyler assessed the credibility of those giving statements. He assessed the logic of the inmates' stories, evidence of collusion among the three inmates and contradictions in their stories.

Chief Tyler determined that discharge was the appropriate remedy as Fenderson's misconduct was so serious that he could not continue to be an employee involved in public safety and welfare. There was too much liability attached. The Sheriff's Department has all the power over inmates. The Department depends on the public's trust. Fenderson violated that trust. Also, Fenderson had three prior incidents of discipline of which two involved sex, as follows:

1. Fenderson received a written reprimand on 3/13/2003 for asking a co-worker to forward him a sports related e-mail which contained

several photos depicting both male and female genitalia that were exposed during a variety of sporting events (Ex. 14). Fenderson then forwarded the e-mail, which was not work related, from a Department computer to another co-worker. Chief Tyler testified that a written reprimand is the lowest level of discipline and not a "major deal", but the e-mail was sexually related and is one additional consideration in imposing discipline.

2. Fenderson was given a five day suspension without pay on 2/11/2005, eventually resulting in a settlement agreement whereby three of the five days of suspension were held in abeyance if no similar violations occurred with a twenty-four month period (Ex. 16). The finding was that Fenderson accessed the internet on the Department's Data Network System for non-work related purposes and viewed approximately three images that were sexual in nature.

[redacted]

The reasons that Chief Tyler decided that the Department needed to discharge Fenderson follow.

Charge 1. Fraternization with inmates is very serious. The Department typically discharges an employee for fraternization alone. Fenderson would have been discharged for allowing [redacted] to use his cell phone and asking her to write her name and telephone number on a piece of paper alone, without any touching allegations. Fenderson admitted that he did both of these things. Fenderson did not know who [redacted] called. Additionally, he admitted watching [redacted] pull her pants down and did not report it to a supervisor. Fenderson violated the public trust and created a liability for the Department. Fenderson's credibility and honesty were affected.

The fraternization policy is Exhibit 24. Fenderson signed that he read and understood it on 8/24/2000. Essentially the fraternization policy states that a "member" shall not fraternize in any way with anyone who is in the custody of the Department or has been in the custody of the Department for the past 30 days, without the written authority of a member's unit commander. If such contact occurs within 30 days of release from custody by or on behalf of the person the member "shall" immediately report such conduct in writing to the unit commander. Asking for and obtaining [redacted] cell phone number (Ex. 13) violates the fraternization policy. It is inappropriate to obtain [redacted] phone number whether he asked for it or she

offered it as the conclusion is that Fenderson obtained it for personal reasons.

Fenderson reported in his 12/30/2007 ICIB interview (Ex. 5, p. 17), when asked why he asked for [redacted] phone number and why he wanted it, that he was "just flirting with her." She flirted back with him. She also told him that she would do him a favor and "that's when I actually asked her for her number." (Ex. 5, p. 18). Fenderson also reported that he told [redacted] that he would call her one day when she got out. It is not appropriate to flirt with inmates. When [redacted] unbuttoned her pants and pulled her fly open Fenderson admitted that it was probably a "come-on" to him and he again just told her that he would give her a call (Ex. 5, p. 21). He didn't tell her to pull up her pants. If [redacted] did something inappropriate Fenderson should have told her to "knock it off", put her in her cell and called for a second person.

You can't use a cell phone for personal favors. He does not know if deputies can have cell phones in the custodial areas of jails such as Lancaster jail. Policy 3-01/090.00 covers security of personal property and prohibits cell phones inside the security areas of custody facilities in order to ensure the safety and security of all (Ex. 29). Fenderson should have at least monitored [redacted] call. Fenderson reported that he was "just being

nice" in his IAB interview (Ex. 6, p. 11) when he let [redacted] use his cell phone.

Even if you disregard any of the statements of the three women and just consider Fenderson's statements, he violated the Department's fraternization policy, General Behavior policy and Performance to Standards policy identified in the letter of discharge.

The relevant Guidelines for Discipline (Ex. 19), which were also reviewed on cross-examination, are "guidelines" and contain a range of appropriate discipline, as follows:

3-01/050.85 Fraternization with an inmate – discharge (Ex. 19, p. 16).

3-01/050.10 Performance to standards – written warning to discharge (Ex. 19, p. 14).

3-01/030.05 General behavior – written warning to discharge (Ex. 19, p. 9). Fenderson's conduct fell within the first item of "Conduct on or off duty which causes embarrassment to the Department" and potentially the last one which is "Use of position or identification to solicit a gratuity or privilege."

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Charge 2. Sexual behavior with [redacted], [redacted] and [redacted]. If any one of the allegations contained in a) – g) occurred, discharge is the only appropriate discipline. As for h), it would depend on any extenuating circumstances. The Department must be able to trust its deputy sheriffs.

Charge 3. Failure to make statements and making false statements in his 12/30/2007 ICIB interview and his 4/23/2009 IAB interview . The relevant Sheriff's Department staff believed [redacted], [redacted] and [redacted]. They did not believe Fenderson. The Department expects that their deputy sheriffs will tell the truth. Fenderson's prior disciplinary record is not very good. Even if Fenderson had been truthful, the Department would have had to discharge him.

Even if Chief Tyler did not believe the inmates he still had enough admissions and other evidence to discharge Fenderson. Fenderson's credibility was impaired from his ICIB and IAB interviews. His failure to notify his supervisor is important. If Fenderson had immediately told his supervisor that he allowed two inmates to use his cell phone and that one of them exposed herself to him, which was tied into the use of the cell phone, the discipline might or might not have been different. Fenderson's behavior is inconsistent with the Department's Core Values set forth in the Policies and Procedures - honesty, dignity, integrity and common sense

(Ex 17). He considered potential liability to the Department. Chief Tyler was not aware of [redacted] settlement agreement (Ex. 27) at the time of Fenderson's discharge.

On **cross-examination** Chief Tyler testified that a station jail is different from a custodial facility where inmates can remain for a longer period of time. A jail holds inmates temporarily such as pre-arraignment.

Chief Tyler reviewed the ICIB interview (Ex. B) of inmate [redacted] (A-4) who arrived at Lancaster jail Friday night, 12/28/2007, and left about 12:30 A.M. on 12/30/2007. She did not hear or observe anything unusual, inappropriate or out of the ordinary occur in the A-row.

He also reviewed the ICIB interview of CA Debra Stone who was working with Fenderson on the 1400 – 2200 shift on 12/29/2009 (Ex. C). CA Stone has worked with Fenderson as a jailer probably 100 times. She had never heard any inmates complain about him. She did not hear or observe anything unusual during their shift on 12/29/2007.

Chief Tyler did not write the letter of intent to discharge Fenderson (Ex. 1). He was the "Skelly" officer. He could request additional interviews but he did not. He considered the mitigating and aggravating factors of the alleged misconduct identified in the 8/19/2009 Disposition Sheet (Ex. 3, p. 6).

There was no mention of Fenderson's prior discipline in the letter of discharge (Ex. 2) but Chief Tyler was aware of it and it played a part in his decision. He would have discharged Fenderson even if he had no prior discipline.

Chief Tyler knows that the fraternization policy is taught throughout a deputy's employment, including during in-service training. He does not know of any specific document used for the 3 – 4 week training of jailers or if the fraternization policy is covered. He does not know if Fenderson attended the Sheriff's academy. He does not know what fraternization training Fenderson received on patrol duty.

He would have discharged Fenderson merely for obtaining [redacted] telephone number with the intent to keep it. If he asked for the number he wants to use it later. He took it to his car. Chief Tyler knows that Fenderson voluntarily gave his cell phone to the ICIB investigators and that he did not put [redacted] number in his cell phone. He provided the investigators with the piece of paper with [redacted] name and telephone number on it. He told the investigators that he was "joking" when he said that he wanted to call her. He considered that Fenderson did not have an attorney with him in his ICIB interview and he assumed that he was probably nervous.

Chief Tyler did not consider giving inmates food or a better mattress as doing a "favor." "Favors" mean something personal, not what one would ordinarily do on a shift.

Chief Tyler considered all of the statements of the three inmates. He considered their credibility and their consistency with the other inmates' statements. He knew that there were many inconsistencies in the detail. He concluded that it was more likely that Fenderson committed the offenses than that he did not commit the offenses.

Chief Tyler did not know if the fact that [redacted] testified that Fenderson did not say "spread your lips" (Allegation 2. c) in the letter of discharge) would have changed his estimation of her credibility. The same is true if [redacted] testified that Fenderson did not pull up her shirt and grab her bare breasts (Allegation 2. d) in the letter of discharge) and if [redacted] testified that Fenderson did not grab her bare buttocks when she tried to pull up her pants (Allegation 2. e) in the letter of discharge). In response to a question from the **Hearing Officer**, Chief Tyler testified that even if the allegations contained in 2. c) – 2. e) of the letter of discharge did not occur he still would have discharged Fenderson because of the seriousness of his other conduct.

The least serious charge is allowing [redacted] to use the cell phone. If he came forward and told his supervisor Chief Tyler would have considered that. There are other ways to handle calling a tow truck in the field, such as advising a supervisor.

On **redirect examination** Chief Tyler testified that the allegations of asking for [redacted] telephone number and keeping it in his car plus viewing [redacted] body without her pants up is sufficiently serious to discharge Fenderson. He evaluated Fenderson's statement that he was not going to telephone [redacted] Fenderson admitted looking at [redacted] (flirting) with some kind of intention. The expectation of line deputies in a custodial setting is that they do not do anything personal.

DISSCSSION

The discussion and findings on some of the allegations are as set forth above. The remaining ones are discussed herein.

1. 10/21/2009 Letter of Discharge (Ex. 2), Allegation 1. a) that Fenderson allowed [redacted] to use his cell phone to make a personal phone call. Fenderson admits that he allowed [redacted] to use his cell phone to make a personal phone call. Under any circumstance, Lancaster jail is a custody facility even if it only houses inmates on a temporary basis. Inmates are

not free to leave of their own accord. Fenderson had never before let an inmate use his cell phone. Even though Fenderson testified that inmates' phone calls are not monitored when they use the free phones they are in areas where staff can observe and overhear conversations. Jailers did not allow inmates to use their cell phones. The mere act of letting [redacted] use his cell phone was so out of the ordinary that it obviously raises questions of Fenderson's motive for doing so. At best Fenderson used extremely poor judgment in providing his cell phone to [redacted] At a minimum he would know what numbers she called. Fenderson was fraternizing with [redacted] as he provided her with a personal favor in violation of the fraternization policy (3-01/050.85) and did not perform to standards (3-01/050.10).

2. 10/21/2009 Letter of Discharge, Allegation 1. b) that Fenderson asked [redacted] to write her name and cell phone number on a piece of paper. Whether [redacted] or Fenderson first raised the issue of [redacted] giving Fenderson her telephone number is really irrelevant. The end result is that Fenderson told [redacted] to write it down and provided her with the paper and pen to write it down. Fenderson admits to this. "Telling" her to write it down or "asking" her to write it down is a distinction without a difference. Fenderson was fraternizing with [redacted] and not performing to standards when he told her to write down her name and phone number. The situation

was exacerbated when he told [redacted] "in a joking way" that he would call her. These are not the expectations that the County, the Department and the public has of its deputy sheriffs. Fenderson's conduct fell far short of the Department's core values of honorably performing his duties, respecting people's dignity, integrity to do right, fighting wrongs and applying common sense (Ex. 17).

3. 10/21/2009 Letter of Discharge, Allegation 2. a) and 2. b) that Fenderson told [redacted] to pull down her pants so he could look at her and that he then touched and/or massaged her genital area. These are the most factually difficult allegations to decide. Both [redacted] and Fenderson have credibility problems. Fenderson was very "wishy-washy" in his testimony relating to this allegation at the hearing. Much of his testimony at the hearing was inconsistent with his statements in his ICIB and IAB interviews. On the other hand, [redacted] testified very inconsistently with her ICIB interview on several of the allegations involving Fenderson's conduct towards her. Evidence Code Section 780 states in part "Except as otherwise provided by statute, the court or jury may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing, including but not limited to any of the following:...(h) A statement made by him that is

inconsistent with any part of his testimony at the hearing." BAJI California Jury Instructions, Instruction 2.22 states "A witness who is willfully false in one material part of his or her testimony, is to be distrusted in others. You may reject the whole testimony of a witness who willfully has testified falsely as to a material point, unless, from all the evidence, you believe the probability of truth favors his or her testimony in other particulars."

The witness testimony has been reported above. There is some corroborating and non-corroborating evidence in evaluating the credibility of [redacted] and Fenderson on these two allegations.

First, there is the memorandum from Cpt. Carl H. Deeley, Lancaster station captain, to Chief Neal Tyler. Cpt. Deeley briefly interviewed [redacted] apparently before 1:00 A.M. on 12/30/2007 after CA Nelson informed him that [redacted] asked to speak to a supervisor regarding a complaint. [redacted] reported to Cpt. Deeley that she had been "sexually harassed" by a black jailer matching Fenderson's description during the previous shift. She reported that she initially refused to provide Fenderson with her telephone number. She also told Cpt. Deeley that after he allowed her to use his cell phone that he directed her to pull her pants down as payback for allowing her to use his cell phone, that she complied and that he then pulled her panties down and groped her bare buttocks. She reported similar facts to

the ICIB investigators. However, she also told the investigators that Fenderson massaged her genital area but apparently did not report this to Cpt. Deeley. When [redacted] testified at the hearing on 10/7/2010 she denied that Fenderson grabbed her bare buttocks. Fenderson testified that he did not ask or tell [redacted] to pull down her pants and that she did so of her own accord. He denied that he ever touched her. Fenderson testified that she put her hands in the waist band of her pants and kind of pulled her pants down.

Second, there are copies of two photographs (Ex. 12-D and Ex. 12-E) that depict [redacted] apparently in the clothes she was wearing during the alleged sexual assault on 12/29/2007. The photographs were apparently taken on 12/30/2007 as Exhibit 12-E depicts [redacted] standing with Sgt. Vaziri. There is no evidence that Sgt. Vaziri and [redacted] were ever together except on the morning of 12/30/007 when Sgt. Vaziri was one of the two investigators who conducted her ICIB interview. Both of these photos depict [redacted] wearing low riding jeans with underpants apparently showing above the top of the jeans. There is no reason to believe that [redacted] was wearing these jeans in any other way when she and Fenderson interacted. One can clearly see [redacted] stomach skin in these photographs

as her shirt does not come down to the top of her pants and the top of her pants are several inches below her waist.

[redacted] and [redacted] both testified that [redacted] immediately told them what happened when [redacted] returned to her cell after she used Fenderson's cell phone. They all testified that Fenderson's behavior directed towards them concerned and bothered them. [redacted] and [redacted] both testified that the lights were out in the A-row hallway when [redacted] was using the cell phone.

Fenderson was very vague in his ICIB interview (Ex 5). He first said that [redacted] did not pull her pants down for him (page 5). He did state that [redacted] unbuttoned her pants (page 19) and then reported that she pulled her pants down but not all of the way (page 20). He said she opened her fly and pulled her pants a bit (page 20). Fenderson agreed that [redacted] could be "coming on" to him (page 21). After she unbuttoned her pants and pulled them down a little she reached in her own underwear. She was tipping her hand forward to expose her pubic area but it wasn't exposed too much" (page 32). When asked if [redacted] had hair his response was "It was light." He had never before had an experience with a female inmate exposing herself to him (page 30).

When questioned on direct examination at the hearing, Fenderson testified that [redacted] did not pull down her pants and that he could not see

her underwear which contradicted his statements in his ICIB interview about both (Ex. 5, p. 32). At the hearing he testified that [redacted] acted as if she were going to pull down her pants and underwear but that she didn't pull them down. When asked on direct examination at the hearing if he flirted with [redacted] Fenderson responded that he was being nice to her and smiling as he wanted to get out of the situation so as not to cause him or her any more embarrassment. He testified that he "just wanted to go home." He testified that he felt uncomfortable in the situation and "it probably wasn't the brightest."

Most importantly, assuming that [redacted] pulled her pants down, it defies reason why Fenderson did not immediately report this conduct to his supervisor. Fenderson had worked as a jailer at the Lancaster station on numerous occasions. He testified that he had never before asked for an inmate's cell phone number or allowed an inmate to use his cell phone. There was an abundance of evidence that inmates routinely flirt with jailers but there was no evidence that inmates routinely pull their pants down for a jailer to view them or to touch them and Fenderson reported that this had never happened to him before even though he had worked as a jailer at the Lancaster station on numerous occasions. Wanting to complete his shift, leave and go home just does not cut it as a reason not to take the time to

report this incident to a supervisor. Also, As Chief Tyler testified, a deputy can just say "knock it off" when an inmate is doing something inappropriate. CA Wilson testified in a similar way regarding how she handles inappropriate inmate conduct.

There were times that Fenderson responded to questions very directly both at the hearing and in his ICIB and IAB interviews, such as whether or not he told [redacted] "to spread her lips" which [redacted] ultimately denied at the hearing. Unfortunately, this was not true about his statements regarding [redacted] pulling down her pants.

In considering the totality of the evidence of the 2. a) allegation, the Department proved by a preponderance of the evidence that Fenderson told [redacted] to pull down her pants. The most salient reasons for this finding are that [redacted] immediately reported to a jailer that she wanted to talk to a supervisor and that within a very short time she reported the incident to Cpt. Deeley. Second, Fenderson denied in his ICIB interview at first that [redacted] pulled down her pants and later in the interview admitted that she did. Third, Fenderson first denied in his testimony at the hearing that she pulled down her pants and then testified that she pulled down the button area of her pants. Overall, on this particular allegation, [redacted] version of events is more credible than Fenderson's and on balance the Department

proved by a preponderance of the evidence that Fenderson told [redacted] to pull down her pants, at a minimum, so he could look at her.

In considering the totality of the evidence of the 2. b) allegation, the Department did not prove by a preponderance of the evidence that Fenderson touched and/or massaged [redacted] genital area. The reasons for this finding are the opposite of the reasons for the finding on Allegation 2. a). The most salient reason for this finding is that [redacted] reported to Cpt. Deeley that Fenderson pulled her panties down and groped her bare buttocks but apparently did not mention that he massaged her genital area as this is not in his report (Ex. 7). While Fenderson was wishy-washy in his testimony regarding whether or not [redacted] pulled down her pants, he consistently denied that he touched her. On balance, while there is some evidence that Fenderson massaged [redacted] genital area, the Department did not prove by a preponderance of the evidence that Fenderson touched and/or massaged [redacted] genital area.

4. 10/21/2009 Letter of Discharge, Allegations 2. c), 2. d) and 2. e). The Department did not prove by a preponderance of the evidence the following allegations, which Fenderson denied and which [redacted] denied occurred while testifying at the hearing:

Allegation 2. c) that Fenderson told [redacted] to "spread your lips [referring to her vaginal area]".

Allegation 2. d) that Fenderson pulled up [redacted] shirt and grabbed her bare breasts underneath her bra.

Allegation 2. e) that Fenderson grabbed [redacted] bare buttocks when she tried to pull up her pants.

5. 10/21/2009 Letter of Discharge, Allegation 2. f). The Department did not prove by a preponderance of the evidence that Fenderson asked [redacted] to take down her pants so he could look at her. Fenderson denied the allegation. [redacted] testified at the hearing that she did not recall if Fenderson asked her take down her pants so he could look at her. Civil Service Rule 4.10 provides that hearsay evidence is not sufficient in itself (absent exceptions not relevant herein) to support a finding and the only evidence that supports this allegation is what [redacted] reported in her ICIB interview, which is hearsay.

6. 10/21/2009 Letter of Discharge, Allegation 2. g). The Department did not prove by a preponderance of the evidence that Fenderson asked [redacted] if he could touch the tops of her breasts. Fenderson denied the allegation. [redacted] testified at the hearing that she vaguely remembered that Fenderson asked her if he could touch the tops

of her ·easts. [redacted] "vague memory" is not sufficient evidence to make a finding of fact that Fenderson told [redacted] that he wanted to touch her breasts. Even when her "vague memory" is combined with her hearsay statement to the ICIB investigators, there is insufficient evidence to find that Fenderson told [redacted] that he wanted to touch her breasts.

7. 10/21/2009 Letter of Discharge, Allegation 2. h). The Department did not prove by a preponderance of the evidence that Fenderson stood and watched [redacted] while she put her pants on after she told him to turn around so she could dress in private. Fenderson denied the allegation. [redacted] testified at the hearing that she turned around to put her pants on and that she did not know where Fenderson was looking at this time. Thus the Department did not prove this allegation by a preponderance of the evidence.

8. 10/21/2009 Letter of Discharge, Allegation 3. a) – e). As set forth in great detail above, the Department did not prove by a preponderance of the evidence any of the facts contained in the allegations referred to herein. Thus, since there are findings that the Department did not prove the alleged facts, Fenderson did not fail to make statements or make false and/or misleading statements in his ICIB and IAB interviews

pertaining to these facts which are alleged in the Letter of Discharge, as follows:

Allegation 3. a) – that Fenderson never touched [redacted] underwear, groin, buttocks or breasts.

Allegation 3. b) – that Fenderson never made the comment to [redacted] to spread her lips, referring to her vaginal area.

Allegation 3. c) – that Fenderson never asked [redacted] to bend over and show him her stuff.

Allegation 3. d) – that Fenderson never told [redacted] that he wanted to touch her breasts.

Allegation 3. e) – that Fenderson never "stared" at [redacted] while she was getting dressed.

9. 10/21/2009 Letter of Discharge, Page 3, Allegation 1a) and 1b) which is that even given Fenderson's version of events concerning the incidents that he violated the general behavior and performance to standards policies and procedures when he fraternized with and/or did favors for [redacted] when he:

a) let her use his cell phone, and

b) asked her to write down her name and telephone number on a piece of paper and give it to him.

By doing the above Fenderson failed to conform to the work standards of a deputy sheriff for numerous reasons. Some additional reasons not necessarily set forth above are that the Department is mandated by the State of California to maintain sole custody of all inmates and the Department maintains a zero tolerance for fraternization with inmates and/or doing personal favors for inmates. Fenderson's admitted conduct subjects the County and Department to potential liability. In fact, Fenderson, the Department and the County did settle a law suit brought by [redacted] which involved paying [redacted] $15,000.00 for Fenderson's alleged misconduct towards her (Ex. 27). The settlement occurred on August 5, 2009 before Fenderson was discharged but Chief Tyler testified that he was not aware of the settlement agreement at the time that Fenderson was discharged.

10. 10/21/2009 Letter of Discharge, Page 4, Allegation 2. a), 2b and 2 c). The Department alleges that Fenderson failed to perform to standards and report information (Manual of Policy and Procedures, Section 3-01/040.90 which states "A member shall promptly report to his immediate supervisor any information or incident coming to his attention that might indicate the need for Department action") when he:

a) failed to notify a supervisor that he loaned his cell phone to [redacted] to make a call.

b) failed to notify a supervisor that he asked for [redacted] cell phone number so he could call her after her release from custody.

c) failed to tell a supervisor that [redacted] exposed herself to him.

The incidents have been discussed in detail above.

All of the above acts were out of the ordinary and usual conduct of a deputy sheriff and a jailer even according to Fenderson. He testified that he never let an inmate use his cell phone before, that he never asked an inmate for her cell phone number before and that a female inmate had never exposed herself to him before. Fenderson was an experienced deputy sheriff and an experienced jailer. Fenderson should have heard all kinds of bells ringing if any one of these incidents occurred. Given that all three occurred, the bells should have been deafening. Fenderson's failure to notify a supervisor demonstrates a complete lack of common sense and good judgment unless he did not want a supervisor to know what had happened. Coupled with the conduct that Fenderson admits to, the seriousness of failing to notify a supervisor about the incidents compounds Fenderson's predicament.

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IS THE DISCIPLINE APPROPRIATE

Fenderson acknowledged receipt of each of the following documents on 8/24/2000 when he began to work as a deputy sheriff for the Department: Guidelines for Discipline, the Sexual Harassment Policy, Policy and Ethics and Accountability in effect at that time (Ex. 25). Fenderson's conduct violated the Fraternization Policy, the General Behavior Policy, the Performance to Standards Policy, the Immoral Conduct Policy and the Reporting Information policy, as discussed above. Chief Tyler testified that even given Fenderson's admitted conduct there was a sufficient basis to discharge him. The Department sets this forth in the Letter of Discharge, Exhibit 2, page 3. The Hearing Officer concurs.

Had Fenderson reported to his supervisor at the end of his shift on 12/29/2007 that he let [redacted] use his cell phone, that he told her to write down her name and phone number, that he told her in a joking way that he would call her and that [redacted] exposed herself to him, the discipline might have been different. He testified that none of these had ever happened by or to him before. Since the inmates conduct, particularly [redacted] conduct, was so out of the ordinary it should have been clear to him that these incidents mandated that he report them to his supervisor pursuant to Policy 3-01/040.90. He had seven years of experience as a deputy sheriff.

Additionally, he had prior police officer experience. The combination of Fenderson's conduct, even without considering his prior discipline, is sufficient cause for the Sheriff's Department to discharge him.

FINDINGS OF FACT

1. That the appellant, WESLEY FENDERSON, worked for the Sheriff's Department as a deputy sheriff from 2000 until he was discharged as of the close of business on October 16, 2007.

2. That appellant was working as a jailer at the Lancaster jail on early evening shift from [redacted] on Saturday, December 29, 2007.

3. That inmates [redacted], [redacted] and [redacted] were inmates in [redacted] during at least a part of Fenderson's shift on December 29, 2007.

4. That appellant allowed [redacted] to use his cellular phone in the A-row hallway of the Lancaster jail while she was in custody on December 29, 2007.

5. That appellant either "asked" or "told", the distinction being immaterial herein, [redacted] to write her name and cell phone number

down on a piece of paper and give it to him, which paper and pen appellant provided to her.

6. That appellant told [redacted] to pull down her pants so that he could look at her.

7. That appellant did not touch and/or massage [redacted] genital area.

8. That appellant did not tell [redacted] to spread her lips (referring to her vaginal area).

9. That appellant did not pull up [redacted] shirt and grab her bare breasts underneath her bra.

10. That appellant did not grab Inmate [redacted] bare buttocks when she tried to pull up her pants.

11. That appellant did not ask [redacted] to take down her pants so he could look at her.

12. That appellant did not ask [redacted] if he could touch the top of her breasts.

13. That appellant did not stand and watch Inmate [redacted] while she put on her pants and that Inmate [redacted] did not ask appellant to turn around so that she could dress in private.

14. That appellant told [redacted] to put on her pants, which she had taken off to lie on the bed, and that Inmate [redacted] turned her back to appellant while she was putting on her pants and did not know where appellant was looking at that time.

15. That appellant did not fail to make statements or make false and/or misleading statements in his 12/30/2007 ICIB interview and/or in his 4/23/2009 IAB interview as follows:

a) that he never touched [redacted] underwear, groin, buttocks and/or breasts.

b) that he never told [redacted] to spread her lips, referring to her vaginal area.

c) That he never asked [redacted] to bend over and show him her stuff.

d) That he never told [redacted] that he wanted to touch her breasts.

e) That he never "stared" at [redacted] while she was getting dressed.

16. That appellant failed to notify a supervisor that he loaned his personal cell phone to [redacted] so she could make a call.

17. That appellant failed to notify a supervisor that he asked [redacted] for her personal cell phone number and that he told her that he would call her after her release from custody.

18. That appellant failed to tell a supervisor that [redacted] had exposed herself to him.

CONCLUSIONS OF LAW

1. The Department met its burden of proof that some of the allegations contained in its October 21, 2009 letter of discharge were true, as set forth above.

2. The Department did not meet its burden of proof that some of the allegations contained in its October 21, 2009 letter of discharge were true, as set forth above.

3. The Department met its burden of proof that the discharge of appellant was the appropriate discipline.

RECOMMENDED DECISION

It is respectfully submitted that the Department has met its burden of proof in establishing that some of the allegations set forth in its October 21, 2009 letter of discharge are true, that the action of the Department in the

discharge of appellant for those allegations for which it met its burden of proof are sufficient to discharge appellant, and, that the action of the Department in the discharge of appellant is sustained.

DATED: June 29, 2011

Mary L. Williams
MARY L. WILLIAMS
Hearing Officer

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Civser\Fenderson



County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



LEROY D. BACA, SHERIFF

October 21, 2009

Deputy Wesley Fenderson, #[redacted]

Dear Deputy Fenderson:

On September 23, 2009, you were served with a Letter of Intention indicating your right to respond to the Sheriff's Department's pending disciplinary action against you, as reported under File Number IAB 2211030. You were also advised of your right to review the material on which the discipline was based.

You did exercise your right to respond. However, after review and consideration of the response submitted to support your position, your Division Chief determined that the recommended discipline is appropriate.

You are hereby notified that you are discharged from your position of Deputy Sheriff, Item No. 2708A , with this Department, effective as of the close of business on October 16, 2009.

An investigation under File Number IAB 2211030, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Sections 3-01/050.85, Fraternization; and/or 3-01/030.05, General Behavior; and/or 3-01/050.10, Performance to Standards, on or about December 29, 2007, while assigned to work the jailer position at Lancaster Station, you fraternized with and/or did favors for a female prisoner, [redacted], as evidenced by, but not limited to:

    a) allowing [redacted] to use your cellular phone to make a personal phone call, and/or;

    b) asking [redacted] to write her name and cell phone number down on a piece of paper and give it to you.

Thus, you failed to conform to the work standards established for your position as a deputy sheriff and your actions have brought discredit upon yourself and the Sheriff's Department.

2. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/030.07, Immoral Conduct; and/or 3-01/050.10, Performance to Standards, on or about December 29, 2007, while working as the station jailer, you behaved in such a manner as to bring discredit upon yourself and the Sheriff's Department and/or failed to maintain a level of moral conduct that is in keeping with the highest standards of the law enforcement profession, as evidenced by, but not limited to:

   a) telling Inmate [redacted] to pull down her pants so you could look at her, and/or;

   b) touching and/or massaging [redacted] genital area, and/or;

   c) telling [redacted] words to that effect of,"spread your lips [referring to her vaginal area]," and/or;

   d) pulling up [redacted] shirt and grabbing her bare breasts underneath her bra, and/or;

   e) grabbing [redacted] bare buttocks when she tried to pull up her pants, and/or;

   f) asking Inmate [redacted] to take down her pants so you could look at her, and/or;

   g) asking Inmate [redacted] if you could touch the tops of her breasts, and/or;

   h) standing and watching Inmate [redacted] while she put her pants on after she told you to turn around so she could dress in private.

3. That in violation of Manual of Policy and Procedures Section 3-01/040.75, Failure to Make Statements and/or Making False Statements During an Internal Investigation, on or about December 30, 2007 and April 23, 2009, during your ICIB and Internal Affairs Bureau interviews, you made false and/or misleading statements,

including, but not limited to:

a) that you never touched [redacted] underwear, groin, buttocks or breasts, and/or;

b) that you never made the comment to [redacted] about "spreading her lips [referring to her vaginal area]," and/or;

c) that you never asked Inmate [redacted] to bend over and show you her stuff, and/or;

d) that you never told [redacted] you wanted to touch her breasts, and/or;

e) that you never "stared" at [redacted] while she was getting dressed.

Even given your version of events concerning this incident, your conduct warrants termination of your employment with the Los Angeles County Sheriff's Department, as evidenced by, but not limited to, the following sections of the Manual of Policy and Procedures:

1. That in violation of Manual of Policy and Procedures Sections 3-01/050.85, Fraternization; and/or 3-01/030.05, General Behavior; and/or 3-01/050.10, Performance to Standards, on or about December 29, 2007, while assigned to work the jailer position at Lancaster Station, you fraternized with and/or did favors for a female prisoner, [redacted] as evidenced by, but not limited to:

   a) allowing [redacted] to use your cellular phone to make a personal phone call, and/or;

   b) asking [redacted] to write her name and cell phone number down on a piece of paper and give it to you.

   The Los Angeles County Sheriff's Department is mandated by the State of California to maintain sole custody of all inmates. In accordance with this responsibility, the Department must maintain a zero tolerance for any behavior on the part of our personnel which violates the basic tenets of our Fraternization policy. Being friendly with, and/or doing favors for, inmates under our care and control opens the Department to potential liability, or complaints of inappropriate conduct against our personnel. Had you merely been performing your routine duties on the night of December 29, 2007,

the three separate complaints lodged against you by female inmates would have less credence. By your own admission, you allowed an inmate to use your personal cell phone and then asked for, and were given, an inmate's personal cell phone number, thereby changing your position of authority to that of a peer. By these actions, you have failed to conform to the work standards established for your position as a deputy sheriff and your actions have brought discredit upon yourself and the Sheriff's Department.

2. That in violation of Manual of Policy and Procedures Sections 3-01/050.10, Performance to Standards and/or 3-01/040.90, Reporting Information, on or about December 29, 2007, you failed to conform to the work standards established for your position as a deputy sheriff, as evidenced by, but not limited to:

   a) failing to notify a supervisor about the fact you loaned your personal cell phone to an inmate so she could make a call, and/or;

   b) failing to notify a supervisor about the fact you had asked for an inmate's personal cell phone number so you could call her after her release from custody, and/or;

   c) failing to tell a supervisor that Inmate [redacted] had exposed herself to you.

In taking this disciplinary action, your record with this Department has been considered, and a thorough review of this incident has been made by Department executives, including your Unit and Division Commanders.

You may appeal the Department's action in this matter pursuant to Rules 4.02, 4.05 and 18.02 of the Civil Service Rules.

You may, if you so desire, within fifteen (15) business days from the date of service of this notice of discharge, request a hearing on these charges before the Los Angeles County Civil Service Commission, 222 North Grand Avenue, Los Angeles, California 90012.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

LARRY L. WALDIE
UNDERSHERIFF

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures and Civil Service Rules.

LLW:RAA:KM:if

c: Advocacy Unit
Neal B. Tyler, Chief, Field Operations Region I
Axel H. Anderson, Captain, Lancaster Station
Internal Affairs Bureau
Office of Independent Review (OIR)
Joseph F. Fennell, Captain, Personnel Administration